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THE
LEY HIPOTECARIA
OF
SPAIN,
OR
LAW ON THE INSCRIPTION OF TITLES TO
IMMOVEABLE PROPERTY;
DEEDS
AND
PREVENTIVE ANNOTATIONS
AFFECTING THE SAME;
DECREES
RESPECTING LEGAL INCAPACITY, ABSENT PARTIES, ETC.,
AND ALSO
PROVISIONS
FOR GIVING EFFECT IN SPAIN TO DEEDS EXECUTED IN FOREIGN
COUNTRIES AND TO THE JUDGMENTS OF FOREIGN COURTS.

TRANSLATED AND EDITED BY

WILLIAM GRAIN,
NOTARY PUBLIC, LONDON.

TO WHICH ARE ADDED
TRANSLATED EXTRACTS FROM THE WORKS REFERRED TO IN THE TEXT
AND
A GLOSSARY OF SPANISH TERMS THEREIN USED.

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1867.



LONDON:
PRINTED BY C. ROWORTH AND SONS,
BELL YARD, TEMPLE BAR.

TO
MY OLD AND DEAR FRIEND,
SEÑOR DON FRANCISCO CUTANDA,
GOWNED HONORARY MINISTER OF THE ROYAL AUDIENCIA,
MEMBER OF THE ROYAL SPANISH ACADEMY, AND ADVOCATE OF
THE ILLUSTRIOUS COLLEGE OF MADRID,
&c. &c. &c.

To have your permission to inscribe your name on these pages, and to address you under the title you have chosen to precede your other designations, is, indeed, a great privilege; while to acknowledge my many obligations to you I deem not more a pleasure than a duty.

Many years have passed since our first meeting, but I have never forgotten the kind encouragement you gave me; although, when you learned my object in coming to Madrid, you with playful humour remarked, that a few months were *rather* a short time to get any insight into the Laws of Spain.

I could only at the moment reply, in the words attributed, I believe, to Lord Bacon, that knowledge was of two kinds: what we carry in our heads, and what we knew where to lay our hands on in books.

To your judgment and valuable advice in the selection of a library I shall always feel deeply indebted; nor must I conclude without gratefully acknowledging your opportune suggestion of a Glossary, and your kindness in assisting me to settle some of the most difficult of the terms comprised in it.

With every wish for your health and happiness,

I remain, my dear Sir,

Yours very faithfully,

WILLIAM GRAIN.

INTRODUCTION.

The following Translation was commenced soon after the promulgation of the Law ; but the extreme difficulty I experienced in finding equivalents in English for many of the terms used made me delay its publication.

The perusal of a Translation I recently met with of a kindred Work has shewn me that the difficulty is one admitted by others, while it has convinced me that by no amount of painstaking and study can I hope to make the Work as complete as I could wish, and that I must abandon it altogether or, as suggested by a friend, have recourse to a Glossary explanatory of terms.

The Glossary includes many terms not found in the Work itself; but I have added them because they may increase the utility of the Book, when the reader has before him Spanish titles to property, wherein these words must necessarily be frequently found.

I will only add, that I shall be thankful to my friends and readers for any suggestions they may be kind enough to make with reference to technical renderings of terms employed in Spanish Law. It is my intention, as my avocations permit, to complete and publish, at an early period, Translations from other of the Codes of Spain, among the earliest of which will be the Laws relating to Successions and Testamentary Matters, and the course of Civil Procedure.

W. G.

31, THREADNEEDLE STREET, LONDON,
January, 1867.

MINISTRY OF GRACE AND JUSTICE.

Law of the 8th of February, 1861. Commanding the Publication of the PROJET DE LOI on Hypothec, to be forthwith made as the Law in the Peninsula and adjacent Islands.

Doña Isabel the Second, by the grace of God and the Constitution Queen of Spain : To all to whom these presents shall come, know ye, that the *Cortes* have decreed, and we have sanctioned, the following :—

ART. 1st.—The *Projet de Loi* on hypothecations, presented by the Government of her Majesty to the *Cortes*, shall be published forthwith as Law in the Peninsula and adjacent Islands.

ART. 2nd.—This Law shall commence to take effect within a year following the promulgation thereof, on a day that the Government of her Majesty may fix.

Therefore, we command all tribunals, justices, chiefs, governors and other authorities, as well civil as military and ecclesiastical, of every class and dignity, to keep and cause to be kept, fulfilled and executed, the present Law in all its parts. The Palace, the 8th of February, 1861.

I, THE QUEEN.

The Minister of Grace and Justice,

SANTIAGO FERNANDEZ NEGRETE.

(*Gaceta de Madrid*, 8th February, 1861.)

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THE LAW OF HYPOTHEC.

CHAPTER I.

OF TITLES SUBJECT TO INSCRIPTION.

ART. 1.—In all places, heads of a judicial district, there shall be established a register in charge of functionaries, who shall be called Registrars.

ART. 2.—In the register mentioned in the foregoing article there shall be inscribed :—

1st. Titles relating to the transfer of the ownership of immoveable property, or of real rights imposed on the same.

2ndly. Titles, wherein are constituted, acknowledged, modified or extinguished the rights of usufruct, use, habitation, *enfiteusis*, hypothecation, annuity, *servidumbre*, or any other real rights.

3rdly. The acts or contracts, in virtue whereof immoveable property or real rights are assigned to any one, although it be with the obligation of transmitting them to another, or of applying them to certain specified objects.

4thly. Executory decrees, wherein are declared the legal incapacity to manage property or the presumption of death of absent persons, the passing of the sentence of interdiction or other whatsoever, whereby the civil capacity of persons may

be modified as regards the free disposal of their property.

5thly. Contracts of lease of immoveable property for a period exceeding six years.

6thly. Contracts of lease of immoveable property wherein the rents of three or more years may have been anticipated.

ART. 3.—In order that the titles mentioned in the preceding article may be inscribed, they must be evidenced by a public instrument, by executory decrees, or authentic documents granted by the Government or its agents, in the form which the ordinances prescribe.

ART. 4.—For the purposes of the law no public offices derived from the Crown, no inscriptions of the public debt or shares in banks and public companies, although nominative, are considered immoveable property.

ART. 5.—There shall also be inscribed in the register the documents or titles mentioned in Article 2, executed in a foreign country, which may have force in Spain in conformity with the laws, and the executory decrees of the class pointed out in No. 4 of the same article pronounced by foreign tribunals, to which fulfilment must be given in the kingdom in conformity with the law of civil procedure (a).

(a) Vide Articles 282, 283, 284, and Appendix, Note (A).



CHAPTER II.

OF THE FORM AND CONSEQUENCES OF INSCRIPTION.

ART. 6.—The inscription of titles in the register may be sought indifferently—

By him who transmits the right.

By him who acquires it.

By him who may have the lawful representation of either of them.

By one having interest in securing the right which ought to be inscribed.

ART. 7.—The inscription of the acts or contracts in which any rights whatsoever are reserved to persons who may not have been parties thereto, must be required by the notary who gives authority to the instrument of title, or by the authority which issues it, if that functionary do not intervene therein, provided that the interest of the said persons be derived from the same title or from documents or proceedings which may have been under consideration for such issue.

ART. 8.—Every one of the properties which may be inscribed for the first time in the new registers shall be indicated by a different and correlative number.

The inscriptions corresponding with each property shall be marked with another special and correlative numbering.

ART. 9.—Every inscription that may be made in the register shall express the following particulars :—

1st. The nature, situation, superficial measure, boundaries, name and number, if they should appear, of the immoveables forming the subject of the

inscription, or which the claim that has to be inscribed may affect.

2ndly. The nature, value, extent, conditions and charges of every species, of the right that may be inscribed.

3rdly. The nature, extent, conditions and charges of the right upon which the right that is the object of the inscription is constituted.

4thly. The nature of the title which has to be inscribed, and the date thereof.

5thly. The christian and surname of the person in whose favour the inscription may be made.

6thly. The christian and surname of the person from whom the property or rights which have to be inscribed immediately proceed.

7thly. The name and residence of the judge, notary or functionary who may give authority to the instrument of title which may have to be inscribed.

8thly. The date of the presentation of the instrument of title in the registry, mentioning the hour.

9thly. The conformity of the inscription with the copy of the instrument of title from whence it may have been taken, and if such instrument of title be of those which have to be preserved in the office of the registry, a reference to the bundle where it is to be found.

ART. 10.—In the inscription of contracts wherein the price or delivery in cash has been stipulated, mention shall be made of what appears in the instrument of title, as also of the manner in which payment has been made or agreed upon.

ART. 11.—If the inscription should be that of transfer of ownership, it shall express whether this has been

effected by paying the price down or at a term fixed upon.

In the first case, whether the whole price has been paid or what portion thereof. And in the second, the manner and periods at which the payment may have been stipulated.

The like circumstances shall be expressed also if the transfer of ownership is effected by exchange or adjudication in payment, and any one of the parties acquiring should remain under obligation to pay the other any difference in money or effects.

ART. 12.—Inscriptions hypothecatory of credit shall express in every case the amount of the obligation secured, and that of the interest, if it should have been stipulated, without which circumstance the said interest shall not be considered secured by the hypothecation, in the terms prescribed by the present law.

ART. 13.—Inscriptions of *servidumbre* shall state—

1st. In the inscription of ownership that of the *predio sirviente*.

2ndly. In the inscription of ownership that of the *predio dominante*.

ART. 14.—The inscription of trust property shall be made in favor of the *heredero fiduciario* (fiduciary heir) if he do not declare with the due formalities the name of the person to whom the property or rights, subject to inscription, have to pass.

If the *fiduciario* (trustee) should make such declaration, the inscription shall forthwith be made in the name of the *fideicomisario*, or party beneficially interested.

ART. 15.—The inscription of the executory decrees mentioned in No. 4 of Article 2 and in Article 5 of this law

shall clearly express the class of incapacity which results from them.

ART. 16. The fulfilment of conditions suspensive, revocatory or invalidatory of acts or contracts inscribed, shall be set forth in the register, either by means of a marginal note, if the acquisition of the right is perfected, or by a new inscription in favor of whom it may appertain to, if the revocation or invalidation come to take effect.

There shall also be set forth by means of a marginal note, whenever the parties interested demand it, or the Judge orders it, the payment of every sum which the party acquiring may make after the inscription, for account or for the balance of the price on the sale, or in discharge of differences on exchange or adjudication in payment.

ART. 17.—Any title, transferring the ownership of immoveable property being inscribed in the register, no other title of an earlier date whereby the ownership of the same immoveable property may be transferred or burthened can be inscribed.

ART. 18.—The Registrars shall certify upon their own responsibility the legality of the extrinsic forms of the deeds in virtue whereof inscription is solicited, and the capacity of the parties executing in so far as is shown by the same deeds.

ART. 19.—When the Registrar shall observe a defect in the extrinsic forms of deeds, or in the capacity of the parties executing, he shall point it out to those who may claim inscription; and if they do not set it right to his satisfaction he shall return to them the same deeds, in order that they may, if they desire it, have recourse to the tribunals, without prejudice

to the making the preventive annotation which Article 42 in clause 8 directs.

ART. 20.—It shall also be a sufficient cause for suspending or refusing the inscription, the not finding previously inscribed the ownership or rights in question in favor of the person who may transfer or burthen them.

In order to cure this deficiency the inscription omitted must previously, and at any time, be made by means of the presentation of the corresponding title, and in default thereof in conformity with what is prescribed in Articles 397 to 410 of this law.

ART. 21.—Notarial instruments of acts or contracts which have to be inscribed shall express at least all the particulars which, under penalty of being void, the inscription must contain, and which may have relation to the persons of the parties executing, to the properties, and to the rights inscribed.

ART. 22.—The notary who may be guilty of any omission which may impede the inscription of the act or contract, in conformity with what is laid down in the foregoing article, shall set it right by drawing up, at his own expense, a new deed if it be possible, and indemnifying in every case the parties interested for the losses which his error may occasion them.

ART. 23.—The titles mentioned in Articles 2 and 5, which may not be inscribed in the register, shall not prejudice a third party.

ART. 24.—The titles inscribed shall produce their effect even against creditors specially privileged by the ordinary law.

ART. 25.—Titles inscribed shall produce no effect against a third party save from the date of their inscription.

ART. 26.—In order to determine the preference between two or more inscriptions, of one and the same date, relating to one and the same property, regard shall be had to the hour of the presentation in the registry of the respective instruments of title.

ART. 27.—For the purposes of this law he who has not intervened in the act or contract inscribed shall be considered a third party.

ART. 28.—The date of the entry of the presentation, which must appear in the inscription itself, shall be considered as the date of the inscription for all the purposes which the latter ought to produce.

ART. 29.—Every real right of which express mention may be made in the inscriptions or preventive annotations, although it be not set forth in the register by means of a separate and special inscription, shall take effect against a third party from the date of the entry of presentation of the respective title.

A mortgage is alone excepted, which is not to take effect against a third party unless it be separately inscribed.

What is laid down in the first paragraph of this article shall be understood without prejudice to the force of the obligation to inscribe specially the real rights mentioned in other inscriptions, and to the responsibility which he may incur who ought to seek inscription in certain specified cases.

ART. 30.—The inscriptions of titles mentioned in Articles 2 and 5, with the exception of that of mortgage, shall be void when they are defective in the particulars set forth in sections 1, 2, 3, 4, 5, 6, and 8 of Article 9, and in section 1 of Article 13.

Inscriptions of mortgages shall be void when they are deficient in the particulars mentioned in

sections 1, 2, 3, 4, 5, and 8 of the said Article No. 9.

ART. 31.—The nullity of inscriptions of which the preceding article treats, shall not prejudice the right previously acquired by a third party who may not have been party to the contract inscribed.

ART. 32.—It shall be understood that the inscription is defective in some of the particulars comprehended in the clauses and articles mentioned in Article 30, not only when mention is omitted to be made therein of all the requisites expressed in each of the same articles or clauses, but also when they are expressed with so much uncertainty that a third party may thereby be led into error on the matter of the same particulars and also prejudiced in consequence thereof.

When the inexactitude is not substantial, conformably with what is laid down in the preceding paragraph, or the omission is not that of all the particulars contained in either of the said clauses or articles, the nullity shall not be declared save in the case of its producing error and prejudice.

ART. 33.—The inscription does not give validity to acts or contracts inscribed, which may be void in conformity with the laws.

ART. 34.—Notwithstanding what is declared in the foregoing article, acts or contracts that may be executed or signed by a person who in the register may appear to have right thereto, shall not be invalidated as regards a third party, when once inscribed, although subsequently the right of the party executing be annulled or dissolved by virtue of a prior title, not inscribed, or from causes that do not clearly appear from the same register.

Only in virtue of a title inscribed, can another subsequent title, also inscribed, be invalidated in prejudice of a third party.

What is laid down in this article shall not produce effect until a year after the present law commences to be in force, and shall not be applicable at any time to a title inscribed in conformity with what is laid down in Article 397, unless prescription has given force to and secured the right to which the said title may refer.

ART. 35.—Prescription shall not prejudice a third party if, claiming a just title, the latter shall not be found inscribed in the register.

The term of the prescription shall commence to run in such case and for such purpose from the date of the inscription.

As regards the lawful owner of immoveable property or the right which is being prescribed, the title shall be established and the time shall be computed in conformity with the ordinary legislation.

ART. 36.—Invalidatory or revocatory actions shall not be given against third parties who may have inscribed the titles of their respective rights in conformity with what is provided by this law.

ART. 37.—The following are exceptions to the rule contained in the preceding article :—

- 1st. Invalidatory and revocatory actions which owe their origin to causes which explicitly appear in the register.
- 2nd. Invalidatory actions of alienations made in fraud of creditors in the following cases :—

When the second transfer has been made by gratuitous title.

When the third party has been an accomplice in the fraud.

In both cases the action shall be lost by prescription at one year, reckoned from the day of the fraudulent transfer.

ART. 38.—In consequence of what is laid down in Article 36, contracts in prejudice of a third party who has inscribed his right shall not be annulled or rescinded for any of the following causes:—

- 1st. By revocation of gifts in the cases allowed by law, except for the nonfulfilment by the donee of the conditions inscribed in the register.
- 2ndly. On account of the legal retraction of a sale or right of *tanteo* in an *enfiteusis*.
- 3rdly. On account of the whole or part of the price of the thing sold not having been paid, unless it appear from the inscription that the term of payment was postponed.
- 4thly. By the double sale of one and the same thing, when either of such sales has not been inscribed.
- 5thly. By reason of crime known as *lesion enorme* or *enormisima*.
- 6thly. By reason of the restitution *in integrum* in favor of those who enjoy this advantage.
- 7thly. By transfers made in fraud of creditors, excluding those excepted in the foregoing article.
- 8thly. By means of all other actions whatsoever, which the laws or special local privileges grant to certain persons to rescind contracts, in virtue of causes which do not expressly appear from the inscription.

In every case in which the revocatory or invalidatory action cannot be directed against the third party, in accordance with the provisions of

this article, the corresponding personal action may be brought to recover indemnification of losses and prejudices from him who has caused them.

ART. 39.—Alienation by gratuitous title in fraud of creditors, in case first, clause 2 of Article 37 shall be understood to be not only the transfer that may be made by donation or cession of right, but also every other transfer, constitution or renunciation of real right, that the debtor may make in the periods respectively specified by the ordinary laws, and in case of their being applicable by the laws of commerce for the revocation of transfers in fraud of creditors, provided that there has not intervened a price, the equivalent thereof, or obligation pre-existing and due.

ART. 40.—The following may be revoked in conformity with what is declared in the preceding article, and provided that they embrace the circumstances which are therein specified:—

- 1st. Annuities, *enfiteuses*, *servidumbres*, usufructs and other real rights constituted by the debtor.
 - 2ndly. The appointments for dowry or gifts *propter nuptias* in favor of a wife, of children, or of strangers.
 - 3rdly. The appropriation of immoveable property in payment of debts not due.
 - 4thly. Voluntary hypothecations made for the security of debts previously contracted without this guaranty, and not due, provided that the conditions of the principal obligation be not thereby made worse.
 - 5thly. Every contract in which the debtor makes over or renounces expressly or tacitly a real right.
- It shall be understood that no price intervenes

nor its equivalent in the said contracts when the notary does not attest its delivery, or when the contracting parties confessing it to have been previously made, the fact be not proved, or it be shown that it ought to be comprised in the third case of the present article.

ART. 41.—The possessor of an immoveable property or real right shall be considered an accomplice in the fraud of its transfer in the second case, section 2 of Article 37,

1st. When it can be shown that the object with which the transfer is made was known to him, and that he aided it as a party immediately acquiring, or in any other character.

2ndly. When he may have acquired his right, whether immediately from the debtor or from some other subsequent possessor, for half or less than half of its true value.

3rdly. When there having been committed any species of imposition or dissimulation in the contract entered into by the debtor, it shall be shown that the possessor had knowledge thereof and profited by the same.



CHAPTER III.

OF PREVENTIVE ANNOTATIONS.

ART. 42.—The following parties shall be able to require a preventive annotation of their respective rights in the corresponding public register :—

1st. He who shall claim at law the ownership of immoveable property, or the constitution, declaration, modification, or extinction of any real right.

- 2ndly. He who by executive judgment should obtain in his favor an order of seizure which may have been put in effect on landed or real property of the debtor.
- 3rdly. He who by any judgment whatsoever should obtain an executory sentence condemning the defendant, the which has to be carried into effect by the steps appointed in cap. 18, part 1, of the Law of Civil Procedure.
- 4thly. He who on being proceeded against in the ordinary tribunal for the fulfilment of any obligation, may obtain, in conformity with law, a decree ordering the sequestration, or prohibiting the alienation of immoveable property.
- 5thly. He who shall institute a suit with the object of obtaining any one of the decrees mentioned in clause 4 of Article 2 of this law.
- 6thly. The legatee who may not have the right, according to law, to institute a testamentary suit.
- 7thly. The refectionary creditor while the works which are the object of the refection are in existence.
- 8thly. He who shall present in the office of the Registry any title, the inscription whereof cannot be definitively made for want of some requisite capable of being supplied, or by reason of any impossibility of the Registrar to make inscription.
- 9thly. He who in any other case whatsoever may have the right of requiring a preventive annotation in conformity with what is laid down in this law (*b*).

ART. 43.—In the first case of the preceding article, the preventive annotation cannot be made, save when it may be ordered by judicial decree, pronounced at the instance of a legitimate party and in virtue of a document sufficient according to the opinion of the Judge.

In the second case of the same article, the annotation shall be obligatory according to what is laid down in Article 953 of the Law of Civil Procedure.

In the fifth case of the said preceding article the annotation shall likewise be made in virtue of judicial sentence, which, when there may be no parties interested who claim it, may be pronounced *ex officio*, provided that the Judge, according to his mature opinion, may deem it fitting in order to secure the effect of the sentence which may be pronounced in the Court (c).

ART. 44.—The creditor who may obtain an annotation in his favor in the cases 2, 3 and 4 of Article 42 shall be preferred only as regards the property annotated to those who may have against the same debtor another debt contracted subsequently to the aforesaid annotation.

ART. 45.—The legatee who may not have a right at law to institute a testamentary suit, may claim at any time a preventive annotation upon the thing bequeathed, if it be specific and immoveable.

If the legacy be not specific, the legatee may demand the annotation of its value upon any real property whatsoever of the inheritance, sufficient to cover it, within one hundred and eighty days following the death of the testator.

In either case the annotation shall be made on presenting in the Registry the title on which the right of the legatee is founded.

ART. 46.—The legatee of specified immoveable property or of credits or pensions imposed thereon shall not be able to make his preventive annotation save on the very same property.

ART. 47.—The legatee of anything (not specific) or of a sum, shall not be able to require an annotation on immoveable property specially bequeathed to others.

ART. 48.—No legatee of a thing of any kind (not specific), or of a sum, who may have in his favor a preventive annotation, shall be able to obstruct another of the same class in obtaining within the legal term another annotation in his favor upon the same property already annotated.

ART. 49.—If the heir should wish to inscribe in his favor, within the said period of 180 days, the hereditary property, and there should not be any legal impediment thereto, he shall be able to do so, provided that previously, and by a public instrument, all the legatees renounce their right of annotation; or that, in default of express renunciation, there be notified to the same legatees, thirty days beforehand, the petition of the heir, in order that during the said term they may make use of such right.

This notification is to be made in conformity with what is laid down in Articles 228, 229, 230 and 231 of the Law on Civil Procedure.

If any one of the legatees should not be a known person, the Judge shall direct the preventive annotation of his legatee to be made either at the instance

of the heir himself, or of some other party interested, or even *ex officio* (d).

ART. 50.—The legatee who shall obtain a preventive annotation shall be preferred to the creditors of the heir, who may have accepted the inheritance without benefit of inventory, and to any other person who subsequently to the said annotation shall acquire any right to the property annotated; but it is to be understood that this preference is solely to the extent of the value of the said property.

ART. 51.—The preventive annotation shall give preference, to the extent of the value of the property annotated, to the legatees who may have exercised their right within the 180 days fixed in Article 45, over those who may not have exercised their right within the same term.

Those who within that term may have effected annotation shall have no preference as among themselves; but without prejudice to that which appertains to a legatee of a specific bequest with reference to the other legatees in conformity with the ordinary legislation, as well in this case as in that of his not having applied for its annotation.

ART. 52.—The legatee, who may not be so of a specific bequest, and who may allow the period specified in Article 45 to run out without exercising his right, shall only be able to require afterwards the preventive annotation on the property of the inheritance, which may be in subsistence in the power of the heir; but it shall produce no effect against him who may previously have acquired and inscribed any right to the hereditary property.

- ART. 53.**—The legatee who, the 180 days having expired, may demand annotation on the hereditary property which may subsist in the power of the heir, shall not thereby obtain any preference over the other legatees who may omit this formality, nor enjoy any other advantage than that of being preferred for the receipt of his legacy to any creditor of the heir who may subsequently acquire any right over the property annotated.
- ART. 54.**—The annotation solicited after the term, shall be able to be made on property annotated within the term in favor of another legatee, provided that it remains in the power of the heir; but the legatee who shall obtain the annotation shall not receive his legacy, save in so far as the amount of the property may be equal to after those who made their annotation within the period are satisfied.
- ART. 55.**—The preventive annotation of legacies and refectory debts shall not be judicially decreed without previous and summary audience of those who may have an interest in opposing it.
- ART. 56.**—The preventive annotation of legacies can be made by agreement between the parties or by order of a Judge.
- ART. 57.**—When annotation by order of a Judge has to be made, the legatee shall make application to the Judge competent to take cognizance of the testamentary estate, setting forth his right, presenting the titles on which it is founded, and designating the property which he desires to annotate. The Judge, on hearing the heir and the said legatee on verbal process according to the steps laid down in Cap. 24, Part the first, of the Law of Civil Procedure, shall pronounce his decree, either refusing the application or acceding thereto.

In this last case he shall specify the property which is to be annotated, and shall direct that there be issued to the Registrar the fitting dispatch with a literal insertion of what is decreed, in order that he may fulfil it.

This decree shall be open to appeal before the territorial *Audiencia* (e).

ART. 58.—If the annotation being petitioned for judicially by one legatee, another exercising the like right to the same property should apply, he shall also be heard in Court.

ART. 59.—The refectionary creditor shall be able to require annotation on a refectionary property for the sums which at one time or successively he may advance, presenting the contract in writing which in any legal form whatever he may have entered into with the debtor.

This annotation shall produce, with reference to the refectionary creditor, all the effects of a mortgage.

ART. 60.—It shall not be necessary that the titles in virtue whereof the preventive annotation of refectionary debts may be solicited should determine precisely the amount of money or effects in which the same debts consist, and it shall be enough if they contain sufficient data for liquidating them at the termination of the works contracted for.

ART. 61.—If the property that has to be the object of the refection should be subjected to real obligations inscribed, the annotation shall only be made in virtue of a unanimous agreement by notarial act between the proprietor and the persons in whose favour the said obligations have been entered into,

(e) Appendix, Note (E).

on the object of the same refection and the value of the property before commencing the works, or in virtue of a judicial decree pronounced on a proceeding taken to ascertain the said value, and with citation of all the persons mentioned.

Art. 62.—Should any one of those who has in his favor the real obligations mentioned in the foregoing article be a person not known, be absent, his place of abode not being known, or should refuse his consent, the annotation cannot be made save upon judicial decree.

ART. 63.—The value which in any form may be given to a property which has to be relected shall, before the works are commenced, be set forth in the annotation of the debt.

ART. 64.—The persons in whose favor real rights over relected property shall be granted, the value whereof is stated in the form prescribed in the preceding articles, shall preserve their right of preference with regard to the refectionary creditor, but only for an amount equal to what may have been declared on the same property.

The refectionary creditor shall be considered as a mortgagee with reference to the excess in value of the property, over the before-mentioned obligations, and in every case with reference to the difference between the price given to the same property before the works, and that which it may realize on its judicial alienation.

ART. 65.—Those defects which occur in titles presented for inscription preventively, and which affect the validity of the said title without necessarily producing the nullity of the obligation raised therein, shall be held capable of rectification.

Those faults which necessarily produce such nullity shall be incurable faults, preventing annotation.

ART. 66.—Titles that may contain any defect not curable, in the judgment of the Registrar, shall not be annotated preventively, but there shall be put a marginal note, in the entry made of their presentation, expressing briefly the reason as well of the inscription being refused, as of the annotation being so.

If within the thirty days following the date of the said entry, he whose title may have been rejected shall put in a claim in order to obtain its inscription, or the declaration of its validity, and asking for the preventive annotation, the which claim shall be made good, it shall take effect back from the date of the entry of presentation.

After the said term, the preventive annotation of the demand shall not take effect save from the date thereof.

ART. 67. In case of annotation being made by reason of the inscription not being able to be effected for want of some requisite capable of being supplied, the party interested shall be entitled to require that the Registrar give him a copy of the said annotation authorized by his signature, and that he therein set forth whether or no there are pending on the register any other titles relating to the same immoveable property, and what they are, in case of there being such.

ART. 68.—Judgments decreeing or refusing preventive annotation in the cases 1, 5 and 6 of Article 42 shall be open to appeal in only one recourse.

In the seventh case of the same article the judgment shall be open to appeal in both recourses, when

he who may have in his favor any prior real right over the immoveable property annotated has opposed the annotation.

ART. 69.—He who being in a position to require the preventive annotation of a right shall fail to do so within the term fixed for the purpose, shall not be able afterwards to inscribe it in his favor, in prejudice of a third party who may have inscribed the same right, acquiring it from some person who may appear in the register with authority to transmit it.

ART. 70.—When the preventive annotation of a right is converted into a definitive inscription of the same, the latter shall produce its effect from the date of the annotation.

ART. 71.—Immoveable property or real rights annotated can be alienated or charged, but without prejudice to the right of the person in whose favor the annotation may have been made.

ART. 72.—Preventive annotations shall contain the particulars which Articles 9, 10, 11, 12 and 13 require for inscriptions so far as they appear in the titles or documents presented for the purpose of requiring the same annotations.

Those which owe their origin to a decree of seizure or sequestration shall set forth the cause which has given rise thereto, and the amount of the obligation which has originated them.

ART. 73.—Every judicial decree, directing the making of a preventive annotation, shall express the particulars which the latter must contain according to what is laid down in the preceding article, if they are shown by the titles and documents which have been before the Judge for the purpose of his pronouncing the decree of annotation.

When the annotation ought to include all the property of a person, as in cases of incapacity, or others of a like nature, the Registrar will annotate all that may be found inscribed in favor of such person.

In this case property not inscribed may be annotated, provided that the Judge so direct, and that the inscription thereof be first made, in favor of the person charged by the said annotation.

ART. 74.—If the titles or documents, in virtue whereof the preventive annotation is sought for, either judicially or extrajudicially, should not contain the particulars which the annotation requires for its validity, the said circumstances shall be set forth by the parties interested in the petition, wherein by common agreement they solicit the annotation. Should there not be any arrangement, he who solicits the annotation shall set forth in the petition wherein he solicits it the said circumstances and there being a previous hearing of the other party interested as to their correctness, the Judge shall decree what is right to be done.

ART. 75.—The preventive annotations shall be made in the same book wherein it would be proper to make the inscription, if the right annotated should be converted into a right inscribed.

ART. 76.—The preventive annotation will be void when thereby knowledge is not conveyed as to the property or right annotated, to the party affected by the annotation, or as to the date of the latter.



CHAPTER IV.

OF THE EXTINCTION OF INSCRIPTIONS AND PREVENTIVE
ANNOTATIONS.

ART. 77.—Inscriptions are not extinguished as to third parties save by the cancellation thereof or by the inscription of the transfer of the ownership or real right inscribed to another person.

ART. 78.—The cancellation of inscriptions and preventive annotations may be total or partial.

ART. 79.—Total cancellation may be demanded, and must in such case be directed,

1st. When the immoveable property, the object of the inscription, has entirely ceased to exist.

2ndly. When the right inscribed is wholly extinguished.

3rdly. When the nullity of the title, in virtue whereof the inscription was made, is declared.

4thly. When the nullity of the inscription is declared on account of the want of any of its essential requisites, in conformity with what is laid down in Article 30.

ART. 80.—Partial cancellation may be demanded, and must in such case be decreed,

1st. When the immoveable property, the object of the inscription or preventive annotation, is reduced.

2ndly. When the right inscribed is reduced in favor of the owner of the property charged.

ART. 81.—The extension of every right inscribed shall be the subject of a new inscription, wherein reference shall be made to that of the right augmented.

ART. 82.—Inscriptions or preventive annotations, made in virtue of a public instrument in writing, shall not

be cancelled save by means of another instrument, wherein there shall be shown the consent of the person in whose favor the first was executed, of the parties having interest therein, or of their lawful representatives, or in virtue of an executory decree against which no appeal is pending in cassation.

Inscriptions or annotations made in virtue of judicial decrees shall not be cancelled, save by executory decree having the condition prescribed in the foregoing paragraph.

ART. 83.—If, an inscription or annotation having been made by judicial decree, the parties interested shall duly agree to cancel it and shall apply to the Judge by means of a petition to that effect, after the same has been confirmed in its contents, and there neither is nor can be prejudice to a third party, a decree directing the cancellation shall be made.

The Judge shall likewise pronounce the same decree when it may be proper, although the person in whose favor the inscription or annotation may have been made do not consent to the cancellation.

If, an inscription or annotation being effected through a public written instrument, its cancellation should be proper, and he, whom it may prejudice, do not consent thereto, the other party interested may demand it by an ordinary suit.

ART. 84.—The Judge competent to direct the cancellation of a preventive annotation or the conversion thereof into a definitive inscription shall be the same one who may have ordered the annotation to be made, or the one who may have legally succeeded him in cognizance of the cause which gives rise thereto.

ART. 85.—The preventive annotation shall be cancelled not only when the right annotated is extinguished, but

also when it is agreed in the written instrument or in the decree it is directed respectively that it be converted into a definitive inscription.

If the annotation be made without a public written instrument, and it be proposed to cancel it without converting it into a definitive inscription, the cancellation can likewise be made by means of documents of the same species as those which may have been presented in order to make the annotation.

ART. 86.—The preventive annotation in favor of the legatee who is not one of a specific bequest shall expire at the expiration of a year from the date thereof. If at the expiration of the year the legacy be not yet demandable, the annotation shall be considered subsisting for two months from the day when it may be demandable.

ART. 87.—If, previously to the preventive annotation being extinguished, it should prove to be inefficacious for the security of the bequest by reason of charges or special conditions of the property annotated, the legatee shall be able to require that there be constituted another on different property, provided that there be such in the inheritance susceptible of such burthen.

ART. 88.—The legatee of rents or periodical pensions, imposed by the testator expressly to be borne by one of the heirs or of the other legatees, but without declaring this obligation to be personal, shall have the right, within the term pointed out by Article 86, of requiring that the preventive annotation which he may have duly made of his right should be converted into an hypothecatory inscription.

ART. 89.—The heir or legatee charged with the pension must constitute the mortgage of which the foregoing

article treats upon the property annotated, if it be adjudicated to him, or upon any other immoveable property of the inheritance that may be adjudicated to him.

The choice shall in every case belong to the said heir or legatee charged, and the holder of the pension shall admit the mortgage that the latter offers him, provided that it be sufficient, and that he charges it on property arising from the inheritance.

ART. 90.—The holder of the pension who may not have effected a preventive annotation shall also be able to require at any time the hypothecatory inscription of his right over the property of the inheritance which may subsist in the power of the heir, or that may have been adjudicated to the legatee or heir, specially charged, provided that he can do it by means of an effective preventive annotation in conformity with what is laid down in the preceding article.

This inscription shall only take effect from its date.

ART. 91.—The holder of the pension who may have obtained a preventive annotation shall not be allowed to require to have mortgaged to him any other property than that annotated, if such be sufficient to insure the legacy. Should it not be so he may require the completion of his mortgage on other property of the inheritance, but in subjection, so far as the last is concerned, to what is laid down in the second paragraph of the preceding article.

ART. 92.—The annotation in favour of a refectionary creditor (*acreedor refeccionario*) shall expire at sixty days from the completion of the work refected.

ART. 93.—The refectionary creditor may convert his preven-

tive annotation into an inscription of hypothecation, if, at the expiration of the period named in the preceding article, the debt be not wholly paid by reason of the term, stipulated in the contract, being not yet arrived.

If the term be expired, the creditor shall be able either to extend it by means of the conversion of the annotation into an hypothecatory inscription, or to demand payment forthwith, for which purpose the annotation shall produce all the effects of an hypothecation.

ART. 94. In order to convert into an inscription of hypothecation the annotation of a refectionary debt, the latter shall be liquidated, if it be not so, and a notarial act shall be drawn up.

ART. 95.—Questions that may arise between the creditor and the debtor on the liquidation of the refectionary debt, or on the constitution of the mortgage, shall be decided by the ordinary tribunal. Until this be substantiated and terminated, the preventive annotation shall continue in force and shall produce all its results.

ART. 96. The annotation required in consequence of the inscription not being able to be made by reason of defects capable of being cured in the title presented, shall expire at sixty days from the date thereof.

This period shall be capable of extension up to 180 days for just reason and in virtue of a judicial order.

ART. 97.—Cancellation of inscriptions or preventive annotations does not extinguish by its own and exclusive virtue, as to the parties, the inscribed rights which it affects; but that which is effected, without any one exterior vice of nullity of those mentioned in the

following article, shall produce all its effects as regards a third party who by means thereof has acquired and inscribed some right, although it may be subsequently annulled for some cause that may not clearly arise from the same entry of cancellation.

ART. 98.—The cancellation shall be void,

- 1st. When it does not clearly point out the inscription or annotation cancelled.
- 2ndly. When the document, in virtue whereof the cancellation is made, does not express the names of the parties executing, of the notary and of the Judge, should there be one in the case, and the date of the execution or issue.
- 3rdly. When it does not express the name of the person at whose instance or with whose consent the cancellation is effected.
- 4thly. When the cancellation, being made in the name of a person other than the one in whose favor the inscription or annotation may be made, does not show as whose representative the said party has acted.
- 5thly. When in a partial cancellation there is not clearly made known the portion of the immoveable property which has been withdrawn, or the portion of the obligation which is extinguished and what is subsisting.
- 6thly. When the cancellation of an annotation, in virtue of a private document, having taken place, the Registrar does not certify to his knowledge of the parties who subscribe it, or of the witnesses, in default of such knowledge by him.
- 7thly. When it does not contain the date of the presentation in the registry of the title wherein the cancellation may have been agreed to or directed.

ART. 99.—The cancellation may be declared void, but without prejudice to third parties, in conformity with what is laid down in Article 97,

1st. When the title in virtue whereof it may have been made is declared false, void or ineffectual.

2ndly. When it has been made by error or fraud.

3rdly. When it has been directed by a Judge not duly authorized.

ART. 100.—Registrars shall certify on their responsibility the
• legality of the extrinsic forms of the instruments in virtue whereof cancellations are solicited, and the capacity of the parties executing, in the terms prescribed with reference to inscriptions in Articles 18 and 19.

ART. 101.—Registrars shall attest, also on their own responsibility, the competency of the Judges who may direct the cancellations in the cases in which the one who may have decreed the inscription or preventive annotation does not sign the order; should they doubt the competency of the Judge, they shall give account to the Regent of the respective Audiencia Tribunal, who shall decide what may be proper.

ART. 102.—When the Regent declares the competency of the Judge, the Registrar shall forthwith make the cancellation.

When he does not deem him competent, the said Registrar shall communicate this decision to the party interested, returning to him the order.

ART. 103.—Against the decision of the Regents, appeal may be made as well by the Judges as by the parties interested to the Audiencia Tribunal, which, on hearing the parties, shall decide as it may deem just.

Against the decree of the Audience Chamber the recourse to cassation shall issue.

ART. 104.—The cancellation of every inscription shall necessarily contain the following particulars:—

- 1st. The class of the document in virtue whereof the cancellation may be made.
- 2ndly. The date of the document and that of its presentation in the registry.
- 3rdly. The name of the Judge or authority who may have granted it, or of the notary before whom it may have been executed.
- 4thly. The names of the parties interested in the inscription.
- 5thly. The form in which the cancellations may have been made.



CHAPTER V.

OF HYPOTHECATIONS.



SECTION I.

Of Mortgages in General.

ART. 105.—Hypothecations subject directly and immediately the property whereon they may be imposed to the fulfilment of the obligations for the security whereof they may be made, whoever the possessor of it may be.

ART. 106.—The following only shall be susceptible of hypothecation:—

- 1st. Immoveable property.
- 2ndly. The real rights, alienable in conformity with law, imposed on immoveable property.

ART. 107.—Hypothecation may be made, but with the restrictions hereafter mentioned ;—

1st. Of the building erected on soil owned by another, the which, if it be hypothecated by him who erected it, shall be without prejudice to the right of the owner of the land, and there is to be understood as subject to such burthen only the right which the party who built it might have over what was built.

2ndly. Of the right of receiving the fruits in the usufruct ; but the mortgage becomes extinguished when the said usufruct ceases by an act foreign to the will of the usufructuary. Should it be concluded by his will, the mortgage shall subsist until the obligation secured be discharged, or until the time arrives when the usufruct would naturally come to an end, had the act which terminated it not occurred.

3rdly. Of the bare ownership, in which case if the usufruct be consolidated with it in the person of the owner, not only shall the hypothecation subsist, but it shall be extended also to the usufruct itself, if the contrary have not been covenanted.

4thly. Of property previously hypothecated, although it may be so with a covenant not to mortgage it again, provided that the option which the party in whose favor the first mortgage is effected may have to receive his debt, remains intact.

5thly. Of the rights of surface pasture, water, timber and other things of the nature of realty, provided that the right of the coparticipants in the property be reserved.

6thly. Of railways, canals, bridges and other works destined for the public service, the working

whereof the government may have granted for ten years and upwards, but there remaining in force the hypothecation, which may be constituted thereon, on the determination of the right of the concessionaire.

7thly. Of property belonging to persons who have not the free disposal thereof, in the cases and with the formalities which the laws prescribe for their alienation.

8thly. Of the right of voluntary hypothecation, but there remaining pending that which is constituted thereon on the determination of the same right.

ART. 108.—These cannot be hypothecated ;—

1st. Fruits and pending profits when separated from the estate that produces them.

2ndly. Moveable objects permanently placed in buildings, whether for ornament or use, or whether for the service of any industrial occupation, unless the same be mortgaged jointly with the said buildings.

3rdly. Public buildings.

4thly. Shares of the state debt, of the provinces or towns, and obligations and shares in banks, undertakings or companies of every class.

5thly. Real right in things which, although they must be possessed hereafter, are not yet inscribed in favor of him who may have the right to possess them.

6thly. Rights of “*servidumbre*,” unless they be mortgaged jointly with the *prédio dominante* (dominant ownership), and excepting in every case that of waters, which may be hypothecated.

7thly. The right of receiving the fruits in the usufruct conceded by the laws or special privileges to

fathers or mothers on the property of their children, and to the consort surviving on that of the one deceased.

8thly. Use and habitation.

9thly. Goods sold with a covenant for resale to the vendor while the sale is not irrevocably consummated or revoked.

10thly. Mines, until the title of definitive concession has been obtained, although they may be situate in a man's own property.

11thly. Property under litigation.

ART. 109. The possessor of property whose right thereover may be subjected by contract or last will to definitive conditions (*condiciones resolutorias*) shall not be able, while these are pending, to hypothecate the ownership of the said property, but he may hypothecate the right of receiving its fruits, subject to what is laid down in the second clause of Article 107.

The ownership in the case put in the preceding paragraph shall only be able to be hypothecated with the express consent of him whom the definitive conditions may profit if he be in existence and capable of binding himself, or when the fulfilment of the condition depends exclusively on the will of the possessor of the property, but the latter being then understood to be bound, during the existence of the hypothecation, to do or not to do, what the subsistence of his right has to depend on, and remaining civilly and, where applicable to the case, criminally responsible to the creditor, when by disregarding the said obligation the said hypothecation is extinguished.

ART. 110.—The hypothecation is extended to natural acces-

sions, improvements, to hanging fruits and rents not received on the obligation becoming due, and to the amount of indemnifications granted or due to the owner by the insurers of the property mortgaged.

ART. 111.—In conformity with what is laid down in the preceding article, there shall be understood to be hypothecated jointly with the property, although they be not mentioned in the contract, provided that they belong to the owner;

1st. Moveable objects permanently placed in a building, whether for ornament or use, or for the service of any industrial occupation, although their collocation has occurred after the mortgage took place.

2ndly. The improvements which may consist in new plantations, works of irrigation or drainage, works of repair, security, alteration, convenience, ornament or raising of buildings and others whatsoever of a like character that do not consist of addition to the land except by natural accession, or in a fresh construction of buildings where there were none previously.

3rdly. Fruits which, at the time the obligation of hypothecation sought to be made effective, were hanging from the trees or plants, or already plucked but not gathered in or warehoused.

4thly. Rents due and not paid, whatever the cause of their not being received, and such as have to be paid, until the creditor receive the whole of his debt.

5thly. Indemnities granted or due to the owner of hypothecated immoveable property, either for insurance of the same or of the fruits, provided that the misfortune has taken place since the mortgage

has been constituted, or even for expropriation of lands for the purpose of public utility.

ART. 112.—When the property hypothecated shall pass to the hands of a third possessor, the hypothecation shall not extend to moveables permanently placed in buildings; nor to improvements which do not consist of works of repair, security or transformation, provided that both one and the other have been at the cost of the new owner; nor to fruits hanging and rents due which belong to him.

ART. 113.—The owner of the accessions or improvements which are not understood as hypothecated according to what is laid down in the preceding article may demand the amount thereof, or retain the objects of which they consist, if this can be done without depreciating the value of the remainder of the property, but in the first case he shall not be able to delay the fulfilment of the principal obligation under pretext of making his claim operative, but he will have to recover what is due to him out of the price of the same property when it may be alienated in order to pay the debt.

ART. 114.—The hypothecation made in favor of a debt which carries interest shall not secure, to the prejudice of a third party, more than the principal, except the interest of the last two years completed, and the portion due in the current year.

ART. 115.—At the expiration of three years computed from the time when the loan commenced carrying interest, not paid, the creditor shall be empowered to require that the mortgage constituted be extended over the same mortgaged property, with the object of securing the interest corresponding to the first of the said years; but only in the case when the obligation to

pay any part of the same interest, having become due, the debtor shall have failed to satisfy it.

If the creditor should exercise his right after the three years, he may demand the extension of the mortgage to the whole of the portion of the interest which at the moment of the making of the said extension may not be secured by the first mortgage, but without in any case what is constituted being allowed to prejudice him who previously and after the two years has acquired any right over the property hypothecated.

If the debtor should not consent to the extension of the mortgage, the creditor shall be entitled to require it in the ordinary course, and to make a preventive annotation of the demand which, with that object, he may put forward.

ART. 116.—If the property hypothecated should not belong to the debtor, the creditor shall not be able to require that there be constituted over it the amplification of the mortgage whereof the preceding article treats, but he shall be allowed to exercise the like right as to any other immoveable property that the same debtor may possess and can mortgage.

ART. 117.—The creditor for over-due pensions by way of annuity cannot proceed against the property charged with the annuity in prejudice of another hypothecatory creditor or subsequent annuitant, save in the terms and subject to the restrictions laid down in Articles 114 and 115, but he may require an hypothecation in the case, and with the limitations that the mortgage creditor has the right to do according to the preceding article, whoever the possessor of the property charged with the annuity may be.

ART. 118.—When a real property charged in *enfiteusis* falls

under forfeiture in conformity with law, the direct *dominium* shall pass to the owner with the mortgages and real charges that the *enfiteuta* may have imposed on it, but there remaining always excepted all the rights belonging to the same direct owner.

ART. 119.—When various properties are hypothecated at the same time for one debt only, the amount or portion of the charge that each one has to answer for must be determined upon.

ART. 120.—The portion of the debt for which each one of the properties hypothecated must answer being fixed in the inscription, they shall not be able to be proceeded against in prejudice of a third party, except for the sum as to which they are respectively affected, and that which appertains to the same in respect of interest in conformity with what is laid down in the foregoing articles.

ART. 121.—What is laid down in the preceding article is to be understood without prejudice, so that if the mortgage does not reach to cover the total of the debt, the creditor may proceed for the difference against other hypothecated properties that the debtor may hold in his power, but without preference as respects the said difference over those who, after the inscription of the mortgage, may have acquired any real right in the said properties.

ART. 122.—The hypothecation shall subsist intact while uncanceled over the whole of the properties hypothecated although the obligation guaranteed be reduced, and over every portion of the same properties that is preserved although the remainder may have disappeared, but without prejudice to what is laid down in the two following articles.

ART. 123.—If a security hypothecated should be divided

into two or more, the hypothecatory debt shall not be distributed between them save when the creditor and debtor voluntarily agree thereto.

This distribution not being made, the creditor shall be able to proceed for the total of the sum guaranteed against each of the new properties into which the first has been divided, or against all of them at the same time.

ART. 124.—The hypothecation constituted for the security of a debt being divided among various properties, and that part of the said debt wherewith either of them may be burthened being paid, the partial cancellation of the hypothecation as respects the same security may be demanded by him whom it interests.

If the part of the debt paid can be applied to the release of one or other of the properties charged for security as not being less than the amount of the special liability of each one, the debtor shall elect which is to be free.

ART. 125.—When the property hypothecated is one, or when, being many, the liability of each one is not specified to meet the case foreseen in Article 123, the liberation of no portion of the properties hypothecated shall be able to be required, whatever be the portion of the debt which the debtor has satisfied.

ART. 126.—The hypothecation made by one who has not the right to make it according to the register shall not be made good, although the party making it should subsequently acquire the said right.

ART. 127.—The creditor shall not be able to demand from the third party in possession of the property hypothecated payment of his debt, save when the debtor do not make it in the ten days following the expiration of the time fixed.

ART. 128.—On payment being demanded, the third party in possession must discharge in the term of other ten days the debt with interest, calculated in conformity with what is laid down in Article 114, or quit the property mortgaged.

ART. 129.—The ten days which, according to Article 127, must run out in order to claim the mortgage debt from the third party in possession of the thing hypothecated shall commence to run from the day following that of the maturity of the obligation.

During the said term the creditor must demand judicially or extrajudicially from the debtor the discharge of his obligation, and if this should not be successful, whatever may be the cause, the third party in possession may be proceeded against.

The ten days which are granted to the third possessor to pay the debt or relinquish the thing hypothecated shall commence to run from that following the one whereon the demand may be made.

ART. 130.—What is laid down in the three preceding articles shall be in like manner applicable to the case where a part of the capital of the debt is left to be paid, or of interest, payment whereof ought to be made at different periods, if either come due without the debtor fulfilling his obligation.

ART. 131.—If for the payment of any of the instalments of the capital or of interest it should be necessary to alienate the security mortgaged, and there should still remain other instalments of the debt coming due, the sale shall take place, and the property shall be transferred to the purchaser with the mortgage corresponding to the portion of the debt that may not be satisfied, the which, with the interest, shall be deducted from the price.

Should the purchaser not desire to have the property with this charge the amount thereof shall be deposited with the interest corresponding thereto, in order that the creditor may be paid at the maturity of the outstanding instalments.

ART. 132.—For the purposes of Articles 127 and 128 he who may have acquired only the usufruct or useful ownership of the property hypothecated, or even the proprietorship or direct ownership, shall be considered also as the third possessor, the correlative right remaining in the debtor.

Should there be more than one third possessor by reason of the proprietorship or direct ownership being found in one person, and in another the usufruct or useful ownership, the demand shall be made on both, and the term of ten days for paying the debt or relinquishing the property shall be common to them.

ART. 133.—If on being required the debtor or, if there be one, the third possessor do neither pay nor quit the property hypothecated within the periods respectively pointed out, the creditor shall be able to require that a decree of execution be issued against the same property on presenting the title of his claim and the document showing the said demands to have been made and the date thereof.

ART. 134.—The hypothecatory right of action shall be barred at twenty years, computed from the time when it might be enforced in conformity with the title inscribed.

ART. 135.—Hypothecations legally constituted upon property which has not to be in future hypothecable in conformity with this law shall be governed while they subsist by the previous legislation.

ART. 136.—Inscriptions and cancellations of mortgages shall be subjected to the rules laid down in Articles 2 and 4 for inscriptions and cancellations in general, without prejudice to the special ones contained in this title.

ART. 137.—Hypothecations are voluntary or legal.

SECTION 2.

Of Voluntary Hypothecations.

ART. 138.—Those hypothecations are voluntary which are entered into between parties or imposed at will of the owner of the goods over which they are constituted.

ART. 139.—Those persons only who have the free disposal of their property, or in case of not having it are found authorized thereto in conformity with law, can constitute a voluntary hypothecation.

ART. 140.—Those who in conformity with the foregoing article have the power of constituting voluntary hypothecations shall be able to do so by themselves or by means of an attorney with special power of attorney to enter into this species of obligation, executed before a public notary.

ART. 141.—An hypothecation constituted by a third party without a sufficient power of attorney shall be capable of being ratified by the owner of the property hypothecated, but it shall not produce effect save from the date whereon the fault committed is cured by a new inscription.

ART. 142.—The hypothecation constituted for the security of a future obligation, or one subject to suspensive conditions inscribed, shall produce effect against a

third person from its inscription if the obligation come to be contracted or the condition to be fulfilled.

If the obligation assured should be subject to a definitive condition inscribed, the hypothecation shall produce its effect as to a third party until the fulfilment of the condition is made to appear in the register.

ART. 143.—When the future obligation is contracted, or the suspensive condition whereof the first paragraph of the preceding article treats is fulfilled, the parties interested must cause it to be so stated by means of a note in the margin of the inscription of hypothecation, without which requisite the mortgage constituted shall neither profit nor prejudice a third party.

ART. 144.—Every act or agreement between the parties that may modify or destroy the efficacy of the prior hypothecatory obligation, as payment, compensation, delay, bargain or promise not to sue, the renewal of the primitive contract, and settlement or compromise, shall not produce effect against a third party if it do not appear in the register by means of a new inscription, or of a total or partial cancellation, or of a marginal note, according as the cases may be.

ART. 145.—Interest on the loan shall not be considered secured with the mortgage in the form which the Article 114 prescribes, except when the stipulation and the amount of the said interest are shown from the inscription itself.

ART. 146.—In order that voluntary mortgages may prejudice a third party, it is required ;—

1st. That they have been covenanted or commanded to be constituted in a public notarial act.

2ndly. That the act has been inscribed in the register which is established by this law.

ART. 147.—The hypothecatory creditor shall be able to take proceedings against the property hypothecated for the payment of the interest due, whatever may be the period when the return of the capital has to be made; but should there be a third party interested in the said property whom the proceedings would injure, the sum that is thereby claimed shall not exceed what belongs to the interest of the last two years expired and not paid and the portion due of the current yearly sum.

The portion of interest which the creditor cannot sue for by the real hypothecatory action he shall be able to claim from the party bound, by a personal action, he being considered with reference thereto in case of a meeting of creditors as a creditor by deed (*acreedor escrituario*).

ART. 148.—Inscriptions of voluntary hypothecations can only be cancelled in the form prescribed in Article 82.

If those should not present themselves at the cancellation who ought to effect it, it may be decreed judicially.

ART. 149.—When an annuity charged with a mortgage is redeemed, the hypothecatory creditor shall have the right at his option, that the party redeeming do pay him his debt entirely with the interest due and to become due or admit the same mortgage to him over the property that was charged with the annuity.

In this latter case there shall be made a new inscription of the mortgage, which shall clearly express such circumstance, and shall take effect from the date of the previous inscription.

ART. 150.—Whenever by fraud, fault or will of the party

paying the annuity the property charged with the annuity comes to be insufficient to guarantee the payment of the pension, the annuitant shall be able to demand from the party paying the annuity, that he either charge upon other property the portion of the capital of the annuity which fails to be secured, by the diminution in value of the said property, or that he redeem the annuity by means of the return of the whole of the capital thereof.

ART. 151.—When a property charged with an annuity becomes deteriorated, or becomes less productive by any cause whatever, other than the fraud, fault or will of the party charged with payment of the annuities, the latter shall have no right to throw it up or to demand a reduction of the annuities while the interest that may accrue from the capital which represents the value of the property suffices to cover them, the said interest being measured at the same rate per cent. as that at which the annuity may have been created.

Should the value of the property be diminished to the point that the net produce thereof shall not suffice to pay the sums charged as annuities, the party charged with the same shall choose between relinquishing the same property or requiring that the pensions be reduced in proportion to the value that it may maintain.

ART. 152.—If after an annuity is reduced in conformity with what is laid down in the second paragraph of the preceding article the value of the property charged with the annuity should be by any means increased, the annuitant shall be able to demand the proportional augmentation of the pensions, but without their exceeding in any case their original amount.

ART. 153.—The hypothecatory debt may be assigned or transferred to a third party, wholly or in part, provided that it be done by a public instrument whereof information is given to the debtor; and that it be inscribed in the register.

The debtor shall not be bound by the said contract for more than he was by his own.

The transferee shall be subrogated in all the rights of the transferor.

ART. 154.—If information of the transfer should be omitted to be given to the debtor, the transferor shall be responsible for the prejudices that the cessionnaire may suffer in consequence of this omission.

ART. 155.—Rights or debts secured by a legal mortgage shall not be able to be assigned save when the case has arrived for demanding the amount thereof, and the persons who have them in their favor may be legally capable of assigning them.

ART. 156.—The hypothecation shall subsist as to a third party until the inscription be cancelled.

SECTION 3.

Of Legal Hypothecations.

§ 1.—*Rules common to Legal Hypothecations.*

ART. 157.—Those only are legal hypothecations which are laid down in Article 168.

ART. 158.—The persons in whose favor this law establishes a legal hypothecation shall have no other right than that of requiring the constitution of a special hypothecation sufficient for the guaranty of their right.

ART. 159.—In order that legal hypothecations shall be understood to be constituted, there is necessary an inscription of the title in virtue whereof they are constituted.

ART. 160.—Persons in whose favor this law establishes a legal hypothecation, shall be able to require that there be constituted a special hypothecation over whatever immoveable property or real rights the person bound to grant it can dispose of, provided that they be in conformity with this law hypothecable.

They shall also be able to require the said hypothecation at any time whatsoever, although the cause which may have given it foundation may have ceased, as matrimony, tutelage, parental authority, or administration, provided that the obligation which ought to have been secured be pending completion.

ART. 161.—The legal hypothecation once constituted and inscribed produces the same effects as the voluntary, without more exceptions than those expressly determined in this law, whoever be the party who has to exercise the rights which the same mortgage confers.

ART. 162.—If in order to the constitution of any legal hypothecation various properties should be offered, and the parties interested should not agree as to the portion of liability which has to attach to each of them in conformity with what is laid down in Article 119, the Judge shall decide, taking previously the opinion of experts.

In like manner the Judge shall decide questions that may arise between the parties interested, upon the qualification of the sufficiency of the properties

offered for the constitution of any legal hypothecation.

ART. 163.—Whenever the legal mortgages inscribed come to be insufficient, those who in conformity with this law have respectively the right or obligation of requiring them or of verifying their sufficiency, shall be able to claim the amplification of the mortgages, or must ask it.

ART. 164.—Legal hypothecations inscribed shall subsist until the rights are extinguished for the security whereof they have been constituted, and they shall be cancelled in the same terms as the voluntary.

ART. 165. In order to constitute or amplify judicially, and at the instance of a party, any legal hypothecation proceeding shall be taken in conformity with the following rules :—

1st. He who has the right to demand it shall present a petition in the court of the domicile of the party bound to give it, asking that the hypothecation be constituted, fixing the amount for which it has to be constituted, and specifying the properties that can be charged therewith, or at least the register where those possessed by the person himself bound ought to stand inscribed.

2ndly. This petition must necessarily be accompanied by the title or document which produces the right of legal hypothecation, and if it should be possible a certificate of the Registrar, wherein all the hypothecable properties possessed by the defendant are set forth.

3rdly. The Judge on view thereof shall command to appear in his presence all the parties interested in the constitution of the hypothecation, in order that they may come to an agreement if possible as respects the mode of carrying it out.

4thly. Should they agree, the Judge shall direct the hypothecation to be constituted in the terms which may have been arranged.

5thly. If they should not agree, whether it be as respects the obligation to hypothecate or whether it be as to the sum which ought to be secured, or as to the sufficiency of the hypothecation offered, there shall be given a copy of the petition of claim to the defendant, and the suit shall follow the stages established for the incidents in the Articles 342 to 350 of the law of Civil Procedure (*f*).

ART. 166.—In the cases wherein the Judge of First Instance ought to proceed *ex officio* in order to require the constitution of a legal hypothecation, he shall direct that the corresponding Registrar do forward to him the certificate prescribed in the second rule of the preceding article. On view thereof, he shall direct the party bound to appear to constitute the hypothecation, and on hearing him and the fiscal attorney, the proceeding shall afterwards go on through the stages which are prescribed.

ART. 167.—What is laid down in the foregoing articles shall be understood without prejudice to the rules established in Article 194 on hypothecations for reserved property, and in the law of Civil Procedure upon securities of tutors and curators, and shall not be applicable to the legal hypothecation in favor of the State, or of provinces or towns, except when the administrative regulations have not established any other proceeding for requiring it.

ART. 168.—The legal hypothecation is established—

1st. In favor of married women over the property of their husbands:—

For dowries which have been solemnly delivered to them under the attestation of a notary.

For marriage gifts and donations which the said husbands have presented to them within the limits of the laws.

For the paraphernalia which with the before mentioned solemnity they have delivered to their husbands.

For whatever other property the wives may have brought to the marriage, and delivered to their husbands with the same solemnity.

2ndly. In favor of children over the property of their parents, for such as the latter ought to reserve to them according to law, and for that of their private property (*peculio*).

3rdly. In favor of the children of a first marriage over the property of their stepfather, for what the mother may have administered or may administer, or for what she ought to reserve to them.

4thly. In favor of minors or parties labouring under incapacity over the property of their tutors or curators, for what the latter may have received from them, or for the responsibility they may incur.

5thly. In favor of the State, of provinces and towns:—

Over the property of those who may contract with them, or may administer their affairs, for the liabilities that they may contract in conformity with law.

Over the property of ratepayers for the amount

due and not paid of one year's taxes that may be charged on it.

6thly. In favor of the assurers over the property insured for the premiums of insurance of two years, and if the assurance be mutual for the last two contributions which may have been fixed.

§ 2.—*Of Dotal Hypothecation.*

ART. 169.—The married woman in whose favor this law establishes a legal hypothecation shall have a right—

1st. That the husband do hypothecate to her and inscribe in the register the immoveable property and real rights which he may receive as estimated dowry, and with the obligation of restoring the amount thereof.

2ndly. That there be inscribed in the registry, if they be not so already, in quality of dotal or paraphernalian property, or by the legal character they have, all the other immoveable properties and real rights which the husband may receive as unestimated, and must in their case restore.

3rdly. That the husband do secure by a special sufficient hypothecation all the other property not comprehended in the foregoing paragraphs, and which may be delivered to him by virtue of the marriage.

ART. 170.—The dowry acknowledged by the husband, the delivery whereof may not be proved or may be proved only by a private document, shall not produce more effect than that of personal obligations.

ART. 171.—Notwithstanding what is laid down in the foregoing article the wife, who may have in her favor the dowry acknowledged by the husband previously to the celebration of the marriage or within the first

year thereafter, may require at any time that the said husband do secure it to her by hypothecation, provided that she prove judicially the existence of the dotal property, or that of other similar or equivalent, at the moment of putting forward her claim.

ART. 172.—Immoveable property or real rights which may be delivered up as estimated dowry shall be inscribed in the name of the husband in the register of property in the same form as any other acquisition of ownership, but there being expressed in the inscription the amount of the dowry whereof the said property forms a part, the value at which it has been estimated, and the dotal hypothecation which is constituted over it.

At the time of making the inscription of ownership of such property in favor of the husband, inscription shall be made of the dotal hypothecation which is constituted thereon in the corresponding register.

ART. 173.—When the wife has inscribed as her own the immoveable property which is to constitute unestimated dowry, or paraphernalia which she delivers to her husband, there shall be set forth in the Register the respective quality of both properties, making a note which shall so express it in the margin of the same inscription of ownership.

If the said property should not be inscribed in favor of the wife it shall be inscribed in the ordinary form, expressing in the inscription its quality of dotal or paraphernalian.

ART. 174.—Whenever the Registrar inscribes property of estimated dowry in favor of the husband in the Register of Ownership he shall make officially the

corresponding hypothecatory inscription in the Register of Mortgages.

If the title presented for the first of the said inscriptions should not be sufficient for making the second, both one and the other shall be suspended, taking of both the preventive annotation that may be proper.

ART. 175.—The legal hypothecation constituted by the husband in favor of his wife shall guarantee the restoration of the property or rights secured only in the cases where the said restitution ought to take effect in conformity with the laws and with the limitations that the latter may determine, and it shall cease to produce effect and shall be able to be cancelled, provided that for any lawful reason the husband may be released from the obligation to restore.

ART. 176.—The amount which has to be secured in virtue of estimated dowry shall not exceed in any case the amount of the estimate, and if the amount of the said dowry should be reduced as exceeding the sum that the law permits, the hypothecation shall likewise be reduced in the same proportion, the corresponding partial cancellation being previously made.

ART. 177.—When unestimated dowry is constituted in properties not immoveable, they shall be valued with the sole object of fixing the sum that the hypothecation ought to secure against the case of the same properties not subsisting at the time for the restoration thereof, but without the said dowry thereby losing its character of unestimated if it were so qualified in the deed of dowry.

ART. 178.—The legal hypothecation in respect of marriage gifts and donations on engagements to marry shall only take place in case that they are presented, or

any of them, by the husband as an augmentation of the dowry. If presented without this requisite they shall only produce a personal obligation, it remaining optional with the husband to secure it or not by a mortgage.

ART. 179.—Should the husband present to the wife *arras* (marriage gifts), and a present on engagement (*donacion esponsalicia*), he shall only be obliged to constitute a mortgage for the former or for the latter at the election of the wife, or at his own election, should she not choose in the term of two months which the law lays down, computed from the day when the promise was made.

ART. 180.—The husband shall not be obliged to constitute a mortgage for the paraphernalian property of his wife, except when it is delivered for management by him by public instrument and under the attestation of a notary.

For the purpose of constituting this mortgage, a price shall be put upon the property, or the value thereof shall be fixed by those who in conformity with this law have the power of demanding it or of stating its sufficiency.

ART. 181.—There is to be understood as property brought to the marriage, for the purposes of the last paragraph of No. 1 of the Article 168, such as under any character in conformity with the privileges or local customs the wife may bring to the conjugal stock, provided that it be delivered to the husband by a public instrument and under the attestation of a notary, in order that he may manage it either with a valuation for the purpose of sale or with the obligation of preserving and returning it on the dissolution of the marriage.

When the delivery of the property whereof the foregoing paragraph treats shall be shewn only by the confession of the husband, the constitution of the dotal hypothecation shall not be able to be demanded except in the cases and terms prescribed in the Article 171.

ART. 182.—The constitution of hypothecation and inscription of property whereof the Article 169 treats shall only be able to be demanded by the woman herself if she should be married and of age at law.

Should she not have yet contracted marriage, or having contracted it should be under age, such right must be exercised in her name, and the sufficiency of the mortgage that is constituted be verified by the father, mother, or by him who may give the dowry or property that must be secured.

In default of these persons, and the woman being a minor, whether or no she be married, the guardian, if there be one, must apply to have the said rights made effective.

ART. 183.—Should the guardian not apply for the constitution of the mortgage, the fiscal attorney shall denounce the fact to the Judge who has appointed him to the office, in order that he may direct what should be done.

In default of a guardian the said attorney shall solicit *ex officio*, or at the instance of some party, that the husband be compelled to the execution of the mortgage.

Justices of the peace shall also be under the obligation of setting the promoters-fiscal in motion, in order that they may fulfil what is directed in the foregoing paragraph.

ART. 184.—The guardian of the woman shall be able to solicit

the dotal hypothecation although the mother be alive or he who has given the dowry, if neither one nor the other do it within the thirty days following the delivery of the dowry.

The guardian should also verify and admit the hypothecation offered if the mother or person who has given the dowry should refuse to do so.

ART. 185.—The dotal hypothecation being solicited judicially by either of the persons indicated in the second paragraph of Article 182, there shall be observed for its verification and admission the following rules :—

1st. If the dowry should be given by the father, the mother, or by both, or should be constituted out of property belonging to the daughter, the verification and admission of the hypothecation shall belong in the first place to the father, in default of him to the mother, and in default of both to the guardian.

2ndly. Should the dowry or property that has to be secured be given by any other person, the verification and admission of the mortgage shall belong to him, and only when he shall not have made them after being required can the father, or in default of him the mother, and in default of both the curator, exercise the like right.

3rdly. He who must verify the hypothecation shall be able to object to its admission, whether as considering the property offered insufficient as a guaranty, or for any other cause that may affect its validity ; but should the opposition be unfounded the Judge shall so declare it, and shall admit the hypothecation.

ART. 186.—Should the husband be wanting in property

wherewith to constitute the hypothecation of which No. 3 of Article 169 treats, he shall remain bound to constitute it over the first immoveable property or real rights that he may acquire; but without this obligation being able to prejudice a third party while the hypothecation is uninscribed.

ART. 187.—When the husband shall not have constituted a dotal hypothecation, and shall commence to dilapidate his property, the right shall remain saved to the wife which the laws grant to her, to require that what subsists of her dowry be delivered to her, be deposited in a secure place, or put under administration.

ART. 188.—Dotal property that may remain hypothecated or inscribed in such quality, according to what is laid down in Nos. 1 and 2 of Article 169, cannot be alienated, burthened or hypothecated, except in the name and with the express consent of both husband and wife, and there remaining reserved to the wife the right of requiring that her husband do mortgage to her other property, if he have it, in substitution of what is alienated, or the first that he may acquire when he is without it at the time of the alienation.

If either the husband or wife should be under age, there shall be observed in the alienation of the said property the rules laid down for this case in the Law of Civil Procedure.

Should the wife be under age, the Judge who authorizes the alienation shall take care that the hypothecation whereof the first paragraph of this article treats is constituted.

ART. 189.—Property belonging to the husband, mortgaged for the security of the dowry in conformity with what is laid down in No. 3 of Article 169, can

be alienated, charged or mortgaged by the said husband without the requisites mentioned in the first paragraph of the preceding article, provided that this be done leaving in subsistence the legal hypothecation constituted over it, with the preference corresponding to the date thereof.

When the said hypothecation has to be extinguished, reduced, subrogated or postponed, the consent of the wife shall be indispensable, and what is laid down in the preceding article shall apply.

ART. 190.—The woman shall be able to require the subrogation of her hypothecation over other property of her husband, according to what is laid down in the two preceding articles, at any time that she shall think fit, after she has consented in writing to the alienation of or charge upon the immoveable property liable for her dowry, or as a previous condition for giving such consent.

Should the wife find herself in either of the positions foreseen in paragraphs second and third of Article 182, the persons designated in the same article shall be able to exercise this right in her name.

ART. 191.—Property belonging to an unestimated dowry, and the paraphernalia that are found inscribed in their respective quality, shall be subject as to their alienation to the rules of the common law; and if they be alienated, it shall be with the obligation of restoring them to the husband, and in subjection to what is laid down in Article 188.

ART. 192.—When the dotal property, consisting of rents or perpetual annuities, comes to be alienated, the restoration thereof shall be secured by constituting a mortgage for the capital that the same rents or annuities represent, capitalized at legal interest.

Should the annuities be temporary, and could or must subsist after the dissolution of the marriage, the mortgage shall be constituted for the sum upon which the husband and wife may agree, and should they not agree, for what the Judge may fix.

ART. 193.—The dispositions of this law on dotal hypothecation neither alter nor modify those contained in the Articles 1039, 1041 and 1114 of the Commercial Code; but what is laid down in Article 1117 of the same shall not take effect when the dowry is secured by a prior mortgage for the debts that may be claimed (g).

§ 3.—*Of the Hypothecation for Reserved Property.*

ART. 194.—The special hypothecation which children under age have the right to require in respect of reserved property, shall be constituted with the following requisites:—

1st. The parent shall present to the Judge the inventory and appraised valuation of the property which he ought to secure, with a statement of what he proposes in hypothecation, accompanied by the titles that prove his ownership of them, and the documents that verify their value and freedom from charges, or the charges to which they are liable.

2ndly. If the Judge should deem the statements of property correct and the hypothecation offered sufficient, he shall pronounce a decree ordering an act to be drawn up in the same proceedings, wherein shall be set forth the immoveable properties reservable, in order to have this quality shewn in their respective inscriptions of owner-

(g) Appendix, Note (G).

ship, and that an hypothecation is constituted for their value and for that of the other property subject to reservation, over the same immoveable properties and those of the absolute ownership of the father, which may be offered in guaranty.

3rdly. Should the Judge doubt the sufficiency of the hypothecation offered by the father, he may direct the latter to take the proceedings or produce the documents that he may judge fitting in order to verify that particular.

4thly. Should the hypothecation not be sufficient, and it should be shewn that the father had other properties upon which to constitute it, the Judge shall direct it to extend to those that in his opinion may be sufficient to secure the right of the child. Should the father not have other property, the Judge shall direct the constitution of a mortgage upon what is offered, but expressing in the decree that it is insufficient and declaring the father to be under a liability to amplify it out of the first immoveable property that he may acquire.

5thly. The act whereof No. 2 of this article treats shall express all the circumstances that the inscription of hypothecation ought to contain, and shall be signed by the father, authorized by the notary, and approved by the Judge.

6thly. By means of the presentation in the registry of a copy of this act and of the decree of the judicial approbation thereof there shall be made the corresponding entries and inscriptions, in order to verify the reservable character of the property that may be so, and to carry into effect the hypothecation constituted.

ART. 195.—If ninety days should run out without the parent presenting to the court the document of which the foregoing article treats, the children's guardians or curators, if there be any, and in default of them their relatives, whatever may be their grade, or the executor of the parent first deceased, shall be able to claim the fulfilment thereof.

The term of ninety days shall commence to be computed from the time when, on account of a second or subsequent marriage having been contracted, the property shall acquire the character of reservable.

ART. 196.—If two or more of the persons included in the preceding article should apply to ask for the constitution of a legal hypothecation, preference shall be given to the first who may have claimed it.

ART. 197.—When the children are of full age they alone shall be able to require the constitution of an hypothecation in their favor.

ART. 198.—The Judge who may have approved the document whereof the Article 194 treats shall take care on his own responsibility that the inscriptions and entries laid down in the No. 6 of the same article are made.

ART. 199.—Should the parent have no property to hypothecate there shall be drawn up the instrument provided in the Article 194, for the sole purpose of causing the reservation and the amount thereof to be shewn.

The decree which in such case may be made shall be limited to declaring what is proper to be done on these points, and the obligation of the parent to hypothecate the first immoveable property that he may acquire.

If the reservable property should be immoveable,

the Judge shall direct that its quality be set forth in the register in the form prescribed in Article 173.

ART. 200.—What is laid down in the second paragraph of the preceding article shall not be applicable to the mother, except in the case of her second husband also not having property to hypothecate.

ART. 201.—The mother shall secure with the same formalities as the father the right of her children to the reservable property, and if she should not have immoveable property of her own, or what she has should not be sufficient for the purpose of constituting an hypothecation for the amount necessary, her second husband shall hypothecate what he may possess, so far as to cover the total amount of what ought to be secured.

If between them the husband and wife should not be able to constitute a sufficient hypothecation, each shall remain severally bound to hypothecate the first immoveable property or real rights that he or she may acquire.

§ 4.—*Of the Hypothecation in respect of "Peculio."*

ART. 202.—The son in whose favor this law establishes a legal hypothecation in respect of *peculio* (reserved property) shall have the right—

1st. That the immoveable property which may form part of the *peculio* be inscribed in his favor, if it have not been done so, with mention of this circumstance.

2ndly. That the parent secure by special hypothecation, if he can do so, the property that may not be immoveable belonging to the same *peculio*.

ART. 203.—It shall be understood that the father cannot constitute the hypothecation of which the foregoing

article treats when he has not hypothecable immoveable property.

If what he may have should be insufficient, he shall, nevertheless, constitute the hypothecation thereon without prejudice to his extending it to other which he may subsequently acquire in case of its being required of him.

ART. 204.—Should the children be of age at law only those to whom the Article 202 gives the right shall be able to require the inscription of property and the constitution of a mortgage, proceeding for the purpose in the form laid down in Article 165.

ART. 205.—Should the children be under age, the following shall be able to solicit in their name that the rights mentioned in Article 202 be made effective:—

- 1st. The persons from whom is derived the property wherein the *peculio* consists.
- 2nd. The heirs or executors of the said persons.
- 3rd. The ascendants of the minor.
- 4th. The mother, if she should be legally separated from her husband.

ART. 206.—The guardian of the child owning the *peculio* shall be obliged, in any case, to solicit the inscription of the property and the constitution of the legal hypothecation, and if he should be anticipated in doing so by any of the persons specified in the preceding article, information of the proceedings shall be given to the said guardian, which shall not be decided upon without hearing him.

§ 5.—*Of the Hypothecation by reason of Guardianship or Curatorship.*

ART. 207.—The “*real cedula de habilitacion*,” or royal warrant of appointment to continue in the guardian-

ship or curatorship of her children, shall not be issued to the mother who enters into a second or subsequent marriage and may obtain such appointment, unless she constitute previously and with the approbation of the Judge the corresponding special hypothecation.

ART. 208.—Should the mother interfere in or continue to interfere in the management of the guardianship or curatorship before constituting the hypothecation provided for in the foregoing article, her husband shall be compelled to make that which is fixed upon in the Article 211 answering therewith for the illegal administration by his wife.

ART. 209.—Should the mother not effect the hypothecation in the term of sixty days, computed from the date of the fresh marriage, the Judge shall name or cause to be named, in conformity with the laws, another guardian or curator for the orphan or the party under incapacity, either at the instance of a relative of the same or *ex officio*.

ART. 210.—The guardian or curator named in conformity with what is laid down in the preceding article shall give his security with the formalities prescribed in the Law of Civil Procedure, the relative who in such case may have solicited the appointment being also heard for his approbation.

ART. 211.—The child whose mother being or having been guardian or curatrix contracts a fresh marriage before the approbation of the accounts of her guardianship or curatorship, shall be allowed to require that the stepfather make on her property a sufficient hypothecation to answer for the results of the said accounts.

ART. 212.—Should the child be under age the constitution

of the hypothecation of which the foregoing article treats must be solicited in his name, and the sufficiency of what may be offered ascertained by—

- 1st. The guardian or curator of the same child.
- 2nd. The guardian *ad litem*, if such has been named.
- 3rd. Either of the relatives of the child on the father's side.
- 4th. In default of all these, by any relative on the mother's side.

ART. 213.—Should two or more of the persons indicated in the foregoing article apply to solicit the hypothecation, that one shall be preferred for the prosecution of the proceedings to whom it may appertain, following the order laid down in the foregoing article.

Should two or more relations of one and the same line make application, the proceeding shall be arranged with all, provided that they agree to act together in litigating.

ART. 214.—The guardians or curators bound to give security must constitute a special hypothecation in favor of the persons whom they have under their charge, in subjection to what is laid down in Chapter III. Part 2, of the Law of Civil Procedure (*a*).

ART. 215.—If the hypothecation constituted by the guardian or curator should come to be insufficient, the Judge shall require according to his judgment an amplification of security, or adopt the fitting measures for securing the interest of the minor or party under incapacity.

ART. 216.—The amplification of security whereof the foregoing article treats can be solicited by any person

(*a*) Appendix, Note (H).

or decreed *ex officio* whenever the Judge may deem it fitting, but observing in every case the formalities provided in the Law of Civil Procedure for the constitution of the first security.

If the Judge should not deem it proper to require the said amplification he shall direct the deposit of the balance of the rents or the placing out of the funds in conformity with what is determined in Nos. 4 and 5 of Article 1272 of the said Law of Civil Procedure (*b*).

ART. 217.—The General Boards of Direction, the Governors of Provinces and Alcaldes must require the constitution of special hypothecations on the property of those who manage the public funds, or contract with the State, Provinces or Towns, in all cases and in the form that the administrative regulations prescribe.

ART. 218.—The State shall have the preference over every other creditor for one year's amount of the taxes charged on immoveable property.

In order to have a like preference for a larger sum than what answers to the said one year's amount, the State shall be able to require a special hypothecation in the form that the administrative regulations lay down.

§ 6.—*Of other legal Hypothecations.*

ART. 219.—The insurer of immoveable property shall have the right to require a special hypothecation over the property insured, the owner whereof has not discharged the insurance premiums of two or more years, or two or more of the last contributions, if the insurance be mutual.

(*b*) Appendix, Note (I).

ART. 220.—Until the premiums of the two years, or the last two contributions in case of there being such, are due, the claim of the insurer shall have preference over the other claims.

ART. 221.—The two contributions, or the last two annual sums whereof the foregoing two articles treat, being due and not satisfied, the hypothecation must be constituted for the whole amount that may be due, and the inscription shall not produce effect save from the date thereof.



CHAPTER VI.

OF THE MODE OF CONDUCTING THE REGISTERS.

ART. 222.—The register, which according to Article 1 of this Law must be kept in every town, the head of a judicial district, shall be so kept in paged books and rubricated by the Judge of First Instance of the same district, or the President where there may be more than one.

ART. 223.—The books mentioned in the foregoing article shall be uniform for all the registers, and shall be formed under the direction of the Ministry of Grace and Justice, with all the precautions fitting in order to prevent any frauds or falsifications which might be committed therein.

ART. 224.—The books which the registrars may keep, formed in conformity with what is laid down in the preceding article, shall alone be evidence.

ART. 225.—The registers shall not be taken on any account from the office of the Registrar. All the judicial

and extrajudicial proceedings that may require the production of the said books shall of necessity be taken in the same office.

ART. 226.—The register shall be divided into two sections : one of which shall be styled the Register of Ownership and the other the Register of Hypothecations.

Each section shall be conducted in different books, numbered in the order of their antiquity.

ART. 227.—The section of the register styled the Register of Ownership shall include all inscriptions, preventive annotations and cancellations of titles, subject to inscription according to Articles 2 and 5, excepting inscriptions, annotations and cancellations of hypothecations.

ART. 228.—The Register of Ownership shall be conducted by opening an entry for each property in the corresponding book, making for the first item therein the first inscription that may be solicited relative to the same property, provided that it be a transfer of ownership.

When the first inscription that is solicited is not of this class, there shall be passed to the registry the last inscription of ownership that may have been made in the old books in favor of the owner whose property may be burthened by the new inscription. All the subsequent inscriptions and cancellations shall be entered continuously, without leaving spaces between any of the entries.

ART. 229.—The entries relating to each property shall be numbered correlatively and shall be signed by the Registrar.

ART. 230.—The section of the register styled the Register of Hypothecations shall be conducted in two books,

one in the order of the dates, and the other in alphabetical order.

ART. 231.—In the book conducted in the order of dates there shall be entered all the inscriptions and cancellations of hypothecations which ought to be made, as also the marginal notes that make reference thereto.

The entries shall be numbered in the same order.

ART. 232.—In the Book of Mortgages conducted in alphabetical order, there shall be made the entries in the letter which corresponds to the initial of the surname of the owner of the immoveable property hypothecated.

ART. 233.—The pages of the Book of Mortgages in alphabetical order shall be divided into five columns, in each of which shall be entered;—

In the first, the name of the party constituting the mortgage.

In the second, the date and class of title in virtue whereof it has been constituted.

In the third, the number that a property hypothecated or one charged with the hypothecatory right may have in the register, and the number of the inscription of the latter.

In the fourth, the date whereon the inscription has been made, the volume and page of the register in the order of dates on which the same is found, and the number it may have in the said register.

In the fifth, the cancellation when it may be made, expressing the date of the title and that of the entry of the cancellation.

ART. 234.—The register in alphabetical order shall be considered as an index of that carried out in the order of dates. The entries that may be made therein shall not produce by themselves alone the effects of

inscriptions, but shall serve as proof, at the discretion of the tribunals, in questions that may arise on the validity of the same inscriptions.

ART. 235.—The want of entry of an inscription in the book in alphabetical order shall not affect the validity of the same inscription, if it should be found drawn out in the register in the order of dates with the corresponding formalities.

ART. 236.—When there is not conformity between the inscription made in the book conducted in the order of dates and the entry in the alphabetical register, the first shall be evidence.

ART. 237.—The Registrar shall authorize with his entire signature the entries of presentation in the Diary, the inscriptions, preventive annotations and cancellations in the Register of Ownership, and those of the Register of Mortgages in the order of dates;—with his half signature the marginal notes and the entries of reference of mortgages that there may be in the same Register of Ownership;—and with his rubrica alone the entries in the Register of Mortgages in alphabetical order.

ART. 238.—Registrars shall also keep a book called the Diary, wherein, at the moment of each title being presented, they shall draw up a brief entry of the contents thereof.

ART. 239.—The entries in the Diary shall be numbered correlatively in the act of making them.

ART. 240.—The entries whereof the foregoing article treats shall be drawn up in the order in which the titles may be presented, without leaving blanks or spaces between them, and shall express;—

1st. The christian and surname and place where resident of him who presents the title.

- 2ndly. The hour of the presentation thereof.
- 3rdly. The class of title presented, its date, and the authority or notary who subscribes it.
- 4thly. The class of right that is constituted, transmitted, modified or extinguished by the title that is proposed to be inscribed.
- 5thly. The nature of the property or real right that may be the object of the title presented, with mention of its situation, its name and its number, if there be any.
- 6thly. The christian and surname of the person in whose favor it is proposed to make the inscription.
- 7thly. The signature of the Registrar and of the person who presents the title, or of a witness if the latter is unable to sign.

ART. 241.—When the Registrar draws up, in the corresponding register, the inscription, preventive annotation or cancellation to which the entry of presentation makes reference, he shall so make mention in the margin of the said entry, indicating the volume and folio where the same may be found, as also the number that the property may have in the register and the number that may have been given to the inscription solicited.

ART. 242.—All days not being holydays, at an hour previously named for closing the register, in the form that the regulations may determine, the Diary shall be closed by means of a minute which the Registrar shall draw up and sign immediately after the last entry that he may have made. Therein mention shall be made of the number of entries that have been drawn up in the day, or the circumstance, if such be the case, of none having been made.

If the hour for closing the register should arrive

before concluding an entry, the latter shall be continued until its conclusion, but without admitting in the meanwhile any other title and expressing such circumstance in the minute of closing.

ART. 243.—Inscriptions made on holydays shall be void.

ART. 244.—At foot of every title that may be inscribed in the Register of Ownership or in that of hypothecations, the Registrar shall put a note signed by him expressing the class of inscription that has been made, the section of the register, the volume and page where it is to be found, the number of the property and that of the inscription effected.

ART. 245.—No inscription shall be made in the Register of Ownership of property unless there be previously proved payment of the dues fixed, or that may be fixed, by the laws, if the act or contract that it is proposed to inscribe carries them.

ART. 246.—Notwithstanding what is provided in the foregoing article the entry of presentation may be drawn up before payment of the duty takes place, but in such case the inscription shall be suspended, and the title shall be returned to him who may have presented it, so that on view thereof he may liquidate and satisfy the said duty.

The latter being paid, the party interested shall return to present the title in the registry and the inscription shall be drawn up.

ART. 247.—The liquidation of the duty that has to be paid in every case shall be made in the offices of the public exchequer in the form that the regulations may determine.

ART. 248.—Letters of payment of duties satisfied for acts or contracts subject to inscription shall be drawn up in duplicate, and both parts shall be delivered to the person who has paid for them.

One of these parts shall be presented and remain archived in the registry.

The Registrar who may not preserve the said part shall be directly responsible for the duties that have failed to be satisfied to the Exchequer.

ART. 249.—In order that any entry may be made in the register, by virtue of a judicial decree, the Judge shall issue in duplicate the corresponding order.

The Registrar shall return one of the parts to the same Judge who has made it, or to the party interested who may have presented it, with a note signed by him expressing its fulfilment, and shall keep the other in his office, drawing up thereon a note rubricated similarly to what he may have put on the part returned.

These documents shall be archived in bundles, numbering them in the order of their presentation.

ART. 250.—The Registrars shall likewise preserve in bundles, in the order of dates and numbered, the titles of another class, in virtue whereof they cancel wholly or partially any hypothecation, but previously putting thereon the note to which the Article 244 refers.

ART. 251.—The other titles that may be presented in the registry shall be returned to the parties interested, with the note provided for in Article 244, after the use being made of them which corresponds to them.

ART. 252.—The parties interested in an inscription, preventive annotation or cancellation shall be able to require that, before the principal entry thereof be made in the book, information shall be communicated to them of the minute of the same entry.

If they observe therein any error or important omission they shall be able to require that it be

cured, having recourse to the Regent or his Deputy in case of the refusal of the Registrar to do it.

The Regent or his Deputy shall decide what is proper to be done without the formality of a suit, and within the term of six days.

ART. 253.—Whenever there is given to the party interested notice of the minute in the form prescribed in the foregoing article and he shews his consent, or not shewing it the Regent decides the form in which it ought to be drawn up, mention shall be made of either circumstance in the respective entry.

CHAPTER VII.

OF THE RECTIFICATION OF ENTRIES IN THE REGISTER.

ART. 254.—The Registrars shall be able to rectify of themselves, upon their own responsibility, the material mistakes made,

1st. In the principal entries of inscription, preventive annotation or cancellation which may exist in the Register of Ownership, or in that of Hypothecations, in the order of dates, and the respective titles whereof are kept in the register.

2ndly. The entries of presentation, marginal notes, indications of reference and entries in the Register of Hypothecations by alphabetical order, although the titles do not exist in the office of the register, provided that the respective principal inscription suffices to shew the error and that it be possible to rectify it thereby.

3rdly. In the same entries comprised in the preceding

paragraph when the principal inscription does not suffice to shew the error, but the title of it is in existence in the register.

ART. 255.—The Registrars shall not be able to rectify without the concurrence of the party interested, who has in his control the title inscribed, or without a judicial decree in default thereof, the material mistakes which may have been committed,

1st. In inscriptions, preventive annotations or cancellations comprised in the Register of Ownership or in that of Hypothecations in the order of dates, and the titles whereof are not in existence in the register.

2ndly. In entries of presentation, marginal notes, indications of reference or entries in the Register of Hypothecations by the alphabetical order, when the said errors cannot be proved by the respective principal inscriptions and the titles are not in existence in the office of the register.

ART. 256.—Errors of judgment committed in the inscriptions, annotations and cancellations, or in other entries referring to the same, when they are not clearly shewn by the same, shall not be rectified, save with the unanimous concurrence of all the parties interested and of the Registrar, or a judicial decree that may so direct.

The same errors committed in the entries of presentation, marginal notes, indications of reference and entries of the Register of Hypothecations in alphabetical order, when the respective principal inscription suffices to make them known, the Registrar may of himself rectify.

ART. 257.—The Registrar, or any of the parties interested in an inscription, may oppose the rectification which

another party solicits on account of an error of meaning, provided that in his judgment the meaning which is supposed to be erroneous is in accordance with the corresponding one in the title to which the inscription refers.

The question which is raised with this view shall be decided by the ordinary tribunal.

ART. 258.—When material errors or those of judgment produce nullity of the inscription, in conformity with the Article 30, there shall be no place for rectifications, and the said nullity shall be solicited and declared by whom it concerns.

ART. 259.—It shall, for the purpose of the foregoing articles, be understood that material error is committed when, without an evident intention, some words are written for others, the expression of some circumstance, the want whereof may not be a cause of nullity, is omitted, or the names themselves or quantities on copying them from the title have errors, without changing thereby the general sense of the inscription or that of any of its terms.

ART. 260.—It shall be understood that there is committed an error of meaning when, in expressing in the inscription any of the contents of the title, the sense is altered or varied without this defect necessarily producing the nullity in conformity with what is laid down in Article 30.

ART. 261.—Material errors that are committed in the drawing up of the entries cannot be cured by emendations, obliterations or erasures, nor by any measure other than a new entry, wherein the error committed in the former one is expressed and clearly rectified.

ART. 262.—Errors of meaning shall be rectified through the medium of a new inscription, which shall be made

by means of the presentation of the same title already inscribed, if the Registrar acknowledges his error or the Judge so declare it, and in virtue of a new title if the error were produced by the vague, ambiguous or inexact drawing up of the primitive title and the parties concur therein or a judicial sentence so declares.

ART. 263.—Whenever the rectification is made in virtue of the same title previously presented, all the expenses and losses that may be incurred shall be for the account of the Registrar.

In case of a new title being needed the parties interested shall pay the costs of the new inscription, and the further costs which the rectification may occasion.

ART. 264.—The rectified meaning shall not produce effect in any case save from the date of the rectification.



CHAPTER VIII.

OF THE DIRECTION AND INSPECTION OF REGISTERS.

ART. 265.—The registers shall appertain exclusively to the Ministry of Grace and Justice.

ART. 266.—There shall be established under the immediate control of the same Ministry of Grace and Justice a General Direction of Registry of Ownership.

ART. 267.—It shall appertain to the General Direction which is established by the foregoing article;—

- 1st. To propose to the Ministry of Grace and Justice or to adopt of itself, in cases that the regulations may determine, the dispositions necessary for the establishments of the registers of ownership throughout the kingdom, and to secure therein

the observance of this law and of the regulations which may be laid down for carrying it out.

2ndly. To instruct the proceedings that may be taken to provide for vacant registries or the separation of Registrars, proposing the definitive resolution that in every case may be fitting in conformity with law.

3rdly. To decide the doubts that may present themselves to the functionaries charged with the application of this law, so far as they do not require dispositions of a general character which ought to be adopted by the Ministry of Grace and Justice.

4thly. To form and publish the statements of the changes of ownership, in conformity with the data which the Registrars may submit.

5thly. To exercise the high inspection and vigilance in all the registries of the kingdom, coming to an understanding in order thereto with the Regents of the *Audiencias*, and even with the Judges of First Instance and the said Registrars when they may deem it desirable for the good of the service.

The other attributes of the direction, its organization and staff shall be fixed by a royal decree.

ART. 268.—The Regents of the *Audiencias* shall be Inspectors of the Registers of their own territorial district, and exercise immediately the faculties which in that character belong to them by means of the Judges of First Instance of the respective districts, who shall for this purpose be their deputies.

In the districts where there is more than one Judge, he whom the Regent shall designate shall exercise the office of Deputy.

ART. 269.—The Regents or their Deputies shall visit the registries on the last day of every quarter, drawing up an act shewing the state in which they find them.

ART. 270.—The Regents shall be able, besides the ordinary quarterly visit, to make personally or by means of their Deputies the extraordinary ones that they may think fitting, either generally to the whole of the registry or partially to certain books of the same.

For extraordinary visits the Regent shall be able to delegate his powers, if he shall think fit, to a magistrate of the *Audiencia*.

ART. 271.—The Deputies shall forward to the Regents the acts mentioned in Article 269 within the three days following the one on which the visit terminates.

ART. 272.—The Regents shall give every six months to the Ministry of Grace and Justice a circumstantial statement of the state in which they find the registers subject to their inspection and authority.

ART. 273.—Should the Regents observe any want of formality on the part of the Registrars in the mode of keeping the registers, or any infraction of the law or of the regulations for its execution, they shall adopt the necessary measures for correcting them, and in case of need for punishing them in conformity with the same law.

Should the fault, or infraction discovered be describable as a criminal offence, they shall put the culprit at the disposal of the tribunals.

ART. 274.—Should the Regent observe that any Registrar had not given security, or should not have put in deposit the fourth part of his fees conformably with what is provided in the Article 305, he shall suspend him forthwith.

ART. 275.—Whenever the Regent suspends any Registrar

he shall name another to replace him *ad interim*, and shall give account thereof, proving the grounds which he may have had for it; to the Ministry of Grace and Justice.

ART. 276.—The Registrars shall consult directly with the Regent or with the Judge his Deputy on every doubt which may arise to them as to the meaning and execution of this law or of the regulations that may be made for its application.

If the Judge of First Instance on being consulted should doubt as to the decision which ought to be adopted he shall submit the case with his opinion to the Regent.

If the Regent on being consulted by the Judge or Registrar should have the same doubt he shall raise the case before the Government.

ART. 277.—Whenever the doubt which gives rise to a case from the Registrar hinders the drawing up of any principal entry in the registry of ownership or in that of hypothecation in the order of dates, a preventive annotation shall be made in the corresponding register, which shall produce all the effects of what is provided for in the eighth paragraph of Article 42.

The decision on the case submitted in such event shall be communicated to the Registrar imperatively within the term of sixty days laid down for the duration of the said annotations in Article 96.

If the said decision be not communicated within the term mentioned, the annotation shall continue to produce its effect.

ART. 278.—For the preventive annotation whereof the foregoing article treats no fee shall devolve on the party interested.

CHAPTER IX.

OF THE PUBLICITY OF THE REGISTERS.

ART. 279.—The registers shall be public to those who have a known interest in ascertaining the position of immoveable property or real rights inscribed.

ART. 280.—The Registrars shall open the registers in the part necessary to persons who in their judgment have an interest in consulting them, without withdrawing the books from the office and with the fitting precautions for securing their preservation.

ART. 281.—The Registrars shall issue certificates ;—

1st. Of the entries of every class which may exist in the Registry relative to the property which the parties interested may point out.

2ndly. Of specified entries which the same parties interested may point out, either fixing what they are or referring to those which exist of one or more classes on certain property.

3rdly. Of the hypothecatory inscriptions and cancellations of the same class made at the charge or for the advantage of persons pointed out.

4thly. Of there not being in existence entries of any class or of any particularized class on property pointed out or in charge of certain persons.

ART. 282.—The certificates mentioned in the foregoing article can refer either to a fixed and specified period or to the whole term run through from the first establishment of the respective registry.

ART. 283.—The freedom from charge or the burthen upon immoveable property or real rights can only be

proved in prejudice of a third party by the certificate whereof the preceding article treats.

ART. 284.—When the certificates whereof the Article 281 treats are not in conformity with the entries they refer to, they shall be taken for what they are worth, saving the right of action of the party prejudiced by them to require the corresponding indemnity from the Registrar who may have committed the error.

ART. 285.—Registrars shall not issue the certificate whereof the foregoing articles treat, save at the instance by petition of a party who in their judgment has an acknowledged interest in discovering the state of the immoveable property or real rights in question, or in virtue of a judicial order.

ART. 286.—Should the Registrar refuse to shew the register or to give a certificate of what is set forth therein, the party who has solicited it shall be able to have recourse by complaint to the Regent of the *Audiencia* if he resides in the same place, or to the Judge of First Instance of the district in any other case.

The Regent or Judge shall decide, he hearing the Registrar.

If the decision be that of the Judge, recourse may be had to the Regent on complaint.

ART. 287.—The petitions of parties interested and the orders of the Judges in virtue whereof the Registrars must certify shall express with all clearness ;—

1st. The class of certificate which, in conformity with Article 281, is required, and if it have to be literal or by way of statement of facts.

2ndly. The notices which according to the class of the said certificate are sufficient to point out to

the Registrar the property or persons in question.

3rdly. The period to which the certificate ought to be confined.

ART. 288.—Certificates shall be given of entries in the register of ownership, or in that of hypothecations in the order of dates, or of both at the same time, according to what may be their class.

There shall also be given certificates of entries in the Diary, when at the time of issuing a certificate any entry of an inscription should be pending in the said register which ought to be included in the certificate asked for, and when it is proposed to verify the freedom of any real property from charge or the non-existence of any right.

ART. 289.—The Registrars shall not certify from the entries in the Register of Hypothecations in alphabetical order, nor from those of the Diary, save as to what is laid down in the second paragraph of the preceding article, except when the Judge so directs, or the parties interested expressly ask it.

ART. 290.—The certificates shall be drawn out literally or by way of abstract, according as they may be ordered to be given, or may be asked for.

Literal certificates shall contain in their integrity the entries to which they refer.

The certificates, by way of abstract, shall express all the circumstances which the said entries may contain necessary for their validity according to Article 30.

The charges which may at the time burthen the immoveable property, or the right inscribed according to the inscription abstracted, and any other point

that the party interested may specify, or the Registrar may deem to be important.

ART. 291.—The Registrar, with previous examination of the books, shall draw up the certificates with relation only to the property, persons and periods designated in the petition or order, without referring in them to more entries or circumstances than those required, except what is laid down in the second paragraph of Article 282 and in Article 292, but nevertheless without omitting any that may be considered as comprised in the terms of the said order or petition.

ART. 292.—When he is asked or ordered to give a certificate of an inscription pointed out to him, whether literally or by way of narration, and that which may be specified has been cancelled, the Registrar shall insert at foot thereof a literal copy of the entry of cancellation.

ART. 293.—When a certificate is asked for of the burthens which an immoveable property has upon it, and there do not appear from the register any in force imposed at the time or by the persons designated, the Registrar shall so express it, making reference to each of the books of register and to the Diary.

If any charge should be shewn, he shall insert it literally or by way of relation, in conformity with what is laid down in Article 290, expressing at foot that there does not appear to be any other subsisting.

ART. 294.—When the Registrar doubts whether an inscription be in force, being uncertain either of the validity or efficacy of the cancellation that may refer to it, he shall insert to the very letter both entries in the certificate, whatever be the form of the latter, expressing that he does so as having doubted whether

the cancellation had all the circumstances necessary to produce its legal effects, and the reasons for the doubt.

ART. 295.—The Registrars shall grant the certificates which may be asked of them within the shortest period possible, but without the same being ever able to exceed the term of four days corresponding to each property, the inscriptions whereof or freedom from charge or burthens whereon it is proposed to prove.

ART. 296.—The term prefixed in the foregoing article being run out, the party interested can apply to the Regent or to his Deputy, asking him to receive a justification for the delay and proceeding in conformity with what is laid down in Article 286.



CHAPTER X.

OF THE APPOINTMENT, QUALIFICATIONS AND DUTIES OF REGISTRARS.

ART. 297.—Every register shall be under the charge of a Registrar.

ART. 298.—In order to be named a Registrar he is required,

1st. To be above twenty-five years of age.

2ndly. To be an advocate.

3rdly. To have discharged functions as a Judge or Fiscal, or exercised the profession of an advocate for four years at least.

ART. 299.—The following shall not be appointed Registrars:

1st. Bankrupts or insolvents who have not obtained rehabilitation.

2ndly. Debtors to the State or public funds as collectors of revenue or on balance of accounts.

3rdly. Persons under criminal process while they are so.

4thly. Parties condemned to *penas afflictivas* until they obtain rehabilitation.

ART. 300.—The office of Registrar shall be incompatible with that of Justice of the Peace, Alcalde, Notary and every other employment supported by the State, the provinces or towns.

ART. 301.—In every registry there shall be the officials and assistants whom the Registrar may have need of, may name and pay, who shall discharge the duties which he may entrust to them, but upon his sole and exclusive responsibility.

ART. 302.—The nomination of Registrars shall be made by the Ministry of Grace and Justice.

ART. 303.—Before proceeding to the appointment of Registrars the Government shall announce the places vacant in the *Gaceta de Madrid* and *Boletines Oficiales* of the respective provinces, in order that within thirty days following the publication of the advertisement the candidates, who deem themselves as having the necessary qualifications to obtain appointments, may present their petitions, with documents in support.

ART. 304.—Those who may be appointed Registrars shall not be capable of being put in possession of their office unless they previously give security, the amount whereof the regulations will fix.

ART. 305.—If, on the announcement of a vacancy in the *Gaceta de Madrid* and in the *Boletin Oficial* of the respective province, no one should present himself to solicit it who is able to give security, the Government may

appoint to it without the said previous security ; but in this case the party appointed must deposit in the general treasury of deposits, in a bank authorized by law, or in the agencies thereof, the fourth part of the fees which may accrue until they make up the amount of the guaranty.

ART. 306.—The deposit or the security in case thereof, of which the foregoing article treats, shall not be returned to the Registrar until three years after ceasing to hold his office, during which time the said return shall be advertised every six months by the Judge in the *Boletín* and official periodicals of the province and in the *Gaceta de Madrid*, in order that it may come to the notice of all those who may have any action to bring against the said Registrars.

ART. 307.—The security of the Registrars and the deposit, in case of there being any, shall remain subject, until they be returned, to the liability which the Registrars may incur by reason of their office, with preference over all the other obligations of the said Registrars.

ART. 308.—The Registrars shall not be removed, except by judicial sentence or by the Government, in virtue of a suit instituted by the Regent, with audience of the party interested and information of the Judge of the district.

In order that the removal may be decreed by the Government, some fault committed by the Registrar in the exercise of his office must be proved in the proceeding, or one that disgraces him in public opinion.

ART. 309.—So soon as the Registrars take possession of the office, they shall propose to the Regent the appointment of a substitute, who shall fill their place during their absence or sickness, they being able to choose

for such purpose either one of the officials of the same registry, or some other person having their confidence.

If the Regent concurs in the proposal, he shall forthwith issue the appointment of the substitute. Should he for any grave reason not consent, he shall direct the Registrar to propose another party.

The substitute shall discharge his functions upon the responsibility of the Registrar, and shall be removed whenever the latter solicits it.

ART. 310.—The Registrars shall form at the end of every year three returns in duplicate, and setting forth—

The first. Alienations of immoveable property made during the year, the net price thereof, and the duties paid on them to the public exchequer.

The second. The rights of usufruct, use, habitation, *servidumbres*, annuities, and any other real rights imposed on immoveable property, exclusive of hypothecations, the value thereof in capital, and rent and duties paid on them to the public exchequer.

The third. The hypothecations constituted, number of real properties hypothecated, amount of the capital secured thereby, cancellations that have taken place of mortgages, number of real properties released and of capitals returned.

The regulation shall determine the further particulars which the said returns must express, and the mode of drawing them up.

ART. 311.—The Registrars shall forward before the first day of April the returns mentioned in the preceding article to the Regents of the *Audiencias*, who shall forward them to the Ministry of Grace and Justice before the first of June, with the observations that they may deem fitting.

The Ministry of Grace and Justice shall before the first of August forward one of the said returns to the exchequer for its information.

ART. 312.—The Registrars shall receive the fees which are fixed by this law, and shall bear the charges necessary for the preservation and carrying on of the registers.



CHAPTER XI.

OF THE RESPONSIBILITY OF THE REGISTRARS.

ART. 313.—The Registrars shall be civilly responsible in the first place by their securities, and, secondly, by their other property, for all the losses and damages they may occasion,

- 1st. By not entering in the Diary, not inscribing or not making a preventive annotation in the term specified in the law, of the titles which may be presented in the registry.
- 2ndly. By error or inaccuracy committed in inscriptions, cancellations, preventive annotations or marginal notes.
- 3rdly. By not cancelling, unless for sufficient cause, any inscription or annotation, or omitting the entry of any marginal note within the corresponding term.
- 4thly. By cancelling any inscription, preventive annotation or marginal note without the title and requisites which this law requires.
- 5thly. By error or omission in the certificates of inscription or of freedom of immoveable property

or real rights, or by not issuing the said certificates in the term fixed by this law.

ART. 314.—The errors, inaccuracies or omissions mentioned in the preceding article shall not be imputable to the Registrar when they have their origin in any defect in the title itself inscribed, and be not of those which notoriously, and, according to the Articles 19, 8th clause of Article 42, Article 100, and Article 101, ought to have given rise to the refusal or suspension of the inscription, annotation or cancellation.

ART. 315.—The rectification of errors committed in entries of whatever nature, and which do not owe their origin to others committed in the respective titles, shall not free the Registrar from the responsibility which he may incur for damages which the same errors may have occasioned before being rectified.

ART. 316.—The Registrar shall be responsible with his security and with his property for the indemnifications and fines to which the acts of his deputy may give rise while the registry may be under his charge.

ART. 317.—He who by error, malice or negligence of the Registrar may lose any real right, or the right of action for claiming it, may forthwith require from the same Registrar the amount of what he may have lost.

He who for the same reasons loses only the hypothecation of an obligation may require from the Registrar at his election, either to assign to him another hypothecation equal to the one lost, or to deposit forthwith the amount secured in order to answer at the due time for the said obligation.

ART. 318.—He who by error, malice or negligence of the

Registrar becomes free from any obligation inscribed shall be responsible jointly with the same Registrar for the payment of the indemnities to which the latter may be condemned for his fault.

ART. 319.—Whenever in the case of the foregoing Article the Registrar has to indemnify the party prejudiced, he shall be able to proceed for the sum which in such character he may pay, against him who by his fault may be free from the obligation inscribed.

When the party prejudiced brings his action against the party favoured by the said fault he cannot proceed against the Registrar, save in the event of his not succeeding in obtaining all the indemnification claimed, or any part thereof.

ART. 320.—The civil action which in conformity with Article 317 the party prejudiced may bring for the faults of the Registrar shall not impede or hinder the exercise of the penal one, which in such cases issues in conformity with the laws.

ART. 321.—Every demand that may have to be brought against the Registrar, in order to exact from him responsibility, shall be presented and substantiated before the court to whose district the registry wherein the fault may be committed may belong.

In the capitals of the province, where there is more than one court, the said demands shall be presented to the chief of the Judges.

ART. 322.—Infractions of this law or of the regulations that may be issued for its execution committed by Registrars, although they may not cause prejudice to a third party or constitute a crime, shall be punished, without the formation of a suit by the Regent, with a fine of from 20 to 200 dollars.

ART. 323.—The executory decrees that may be pronounced condemning Registrars to the indemnification of losses and damages shall be published in the *Gaceta de Madrid* and in the *Boletín Oficial* of the province, if they have to be made good with the security on account of the party condemned not having satisfied the amount of the indemnification.

In virtue of this advertisement those who think themselves prejudiced by other acts of the same Registrar shall be able to bring forward their respective demands, and if they do not do so within the term of ninety days, the sentence shall be carried into effect.

ART. 324.—Should any claims be brought forward within the term of ninety days, the execution of the sentence shall remain suspended until an executory decree be made on them, unless the security should notoriously suffice to cover the amount of the said claims after fulfilment of the decree.

ART. 325.—When the security does not extend to suffice to cover all the claims that may be deemed legal the amount shall be distributed rateably among those who may have made them out.

What is laid down in the preceding article shall be understood without prejudice to the liability of the other property of the Registrars.

ART. 326.—The Regent shall forthwith suspend the Registrar condemned by executory decree to the indemnification of losses and prejudices if in the term of ten days he do not complete or replace his security, or secure to the claimants the fruits of the respective judgments.

ART. 327.—The party who, being prejudiced by the acts of a Registrar, does not establish his demand within the

term of ninety days specified in Article 323, shall be indemnified out of what may remain of the security or of the property of the Registrar himself and without prejudice to what is laid down in Article 318.

ART. 328.—If, the demand of indemnification being admitted, the amount of the security should not appear to be sufficient to secure that of the demand, the Judge shall decree at the instance of the plaintiff a preventive annotation on the property of the Registrar.

ART. 329.—When a Registrar is at the same time condemned to indemnification of losses and damages and to the payment of fines the former shall be discharged preferentially.

ART. 330.—The period for the return of the securities is to be computed from the time when the party interested ceases to exercise the office of Registrar, and not from the time when he ceases in one registry in order to go over to another.

ART. 331.—The Registrar who passes from a registry of a larger amount of security to another which requires a lesser shall not have returned to him the difference save at the term and with the conditions which the Article 306 prescribes.

ART. 332.—The action to claim indemnification of losses and prejudices caused by the acts of the Registrars shall be barred by prescription at the end of a year from the time when the prejudices become known to him who might claim for them, and shall in no case continue a longer time than that pointed out by the ordinary laws for the barring by prescription of personal actions; it being computed from the date when fault may have been committed.

ART. 333.—The Judge before whom a Registrar may be

proceeded against for indemnification of damages caused by his acts shall immediately give information of the claim to the Regent to whom the same Registrar is subject.

The Regent on view thereof shall order the Judge to direct the preventive annotation whereof the Article 328 treats, if he think it legal and it have not been done, ordering at the same time that account be rendered of the progress of the case at fixed periods.

He who absents himself ninety days, and does not move in the demand which he has brought forward shall be understood as renouncing his claim.



CHAPTER XII.

OF THE FEES OF REGISTRARS.

ART. 334.—Registrars shall receive the fees for entries which they make in the books and for certificates which they issue in strict conformity with the scale which is annexed to this law.

The acts or proceedings which have not fees specified in the said scale shall not produce any.

ART. 335.—The fees of the Registrar shall be paid by the party or parties in whose immediate favor the right is inscribed or noted.

ART. 336.—When there shall be several having the obligation mentioned in the foregoing article, the Registrar shall be able to require payment from either of them, and the one who makes it shall have the right to claim from the others the portion that he has paid for them.

In any case he shall be able to proceed to the exaction of the said fees by way of seizure, but the inscription shall never be delayed or refused for want of their payment.

- ART. 337.—Entries which are made in the indices in the Register of Mortgages in alphabetical order, or in either of the auxiliary books which the Registrars may keep, shall not involve fees.
- ART. 338.—In the fees which the scale fixes for certificates of the Registrar there shall not be taken as included the expense of the stamped paper on which they must be drawn up, which must be at the cost of the parties interested.
- ART. 339.—At foot of every entry, certificate or note which may have involved fees, the Registrar shall stamp the amount of what he may have received, citing the number in the scale in conformity with which it has been exacted.
- ART. 340.—The fees which may be coming to the Registrar for entries or certificates, which the Judge may command to be drawn up or delivered in consequence of the suits of which they may have cognizance, shall be specified for their exaction and collection with the other costs of the same suit.
- ART. 341.—When the Judge declares as groundless the refusal of the Registrar to inscribe or make definitive annotation of a title, the party interested shall not be obliged to pay the fees for the corresponding preventive annotation, or in case thereof for a marginal note which the same Registrar may have made in the entry of the presentation at the time of returning the said title, nor for the cancellation of the same note.
- ART. 342.—On the rectification of an entry in error of any

class made therein by the Registrar, he shall not receive fees for the new entry which he may draw up, but without prejudice to what is laid down in the second paragraph of Article 263.

ART. 343.—When the value of the property or right to which the entry or certificate refers does not exceed 2,000 reals but is above 1000 reals, there shall only be demanded one-half of the respective fees fixed in the scale. If, exceeding 500 reals, it is not above 1000 reals, there shall only be demanded a fourth of the same fees.

If it do not exceed 500 reals there shall only be demanded the fixed amount which the same scale points out.

ART. 344.—The Registrars shall be strictly bound in the drawing up of entries, notes and certificates by the instructions and forms which the regulation for the execution of this law will contain.

ART. 345.—The Judges deputed by the Regents for the inspection of the registers shall examine very carefully on their visitations, whether the entries are drawn up in accordance with the forms mentioned in the preceding Article, and shall set forth in the Report the faults which they may observe of this nature, in order that the Registrar, who may give to his entries greater extension than what is necessary, or who may omit to make mention therein of the particulars which according to their class they should contain, may be disciplinarily corrected.

ART. 346.—The Government, within the five years following the publication of this law, may make in the scale which accompanies it the alterations that experience may suggest, hearing the *Consejo de Estado*.

The five years having elapsed, no alteration shall be capable of being made save by means of a law.

CHAPTER XIII.

OF THE LIBERATION OF LEGAL HYPOTHECATIONS AND OTHER EXISTING BURTHENS.

ART. 347.—Those who, at the time of the publication of this law, have in their favor any legal hypothecation not being of those excepted in the Article 354, may require within the term of one year that the person bound by the said hypothecation shall constitute and inscribe in place thereof a special one sufficient to answer for the amount of the obligation secured by the first.

The year fixed in the preceding paragraph shall commence to run from the day whereon this law begins to be in force.

ART. 348.—If the amount of the obligation, which ought to be secured in virtue of what is laid down in the preceding article, be not determined or liquidated, it shall be fixed by common consent among the parties interested or their legitimate representatives, for the purpose of fixing the amount of the special hypothecation.

In this case, he who may have constituted a mortgage shall not remain bound for more than what can be required of him as arising from the principal obligation, nor shall he who has in his favor the said mortgage lose his right to obtain by personal action the portion of the debt which the property hypothecated shall not extend to cover.

ART. 349.—If there be no agreement between the parties interested as to determining the amount of the obligation which has to be secured, or the sufficiency

of the property offered for the hypothecation, both of these points shall be determined by the Judge in the form prescribed by the Article 165.

ART. 350.—The year prescribed in the Article 347 having run out, they shall not be able to require the constitution of special hypothecations in substitution of the legal ones, save those persons who have the right thereto in conformity with this law, and in the form which the same prescribes, without prejudice to what is laid down in Article 354.

ART. 351.—Neither shall any legal hypothecation not inscribed produce any effect against a third party after the expiration of the year, with the exclusion of those comprised in the aforesaid Article 354.

ART. 352.—Special hypothecations which may be constituted within the said term of a year, whether in substitution of the legal ones comprised in the Articles 353 and 354, or whether in security of the rights to which the Article 358 refers, shall produce their effect from the date whereon in conformity with the previous legislation the legal hypothecation or the right assured ought to have produced it, for which purpose the said date ought to be fixed in the inscription itself.

Those which are constituted after the said term has passed, whatever may be their origin and class, shall produce no effect as to a third party, except from the date of their inscription.

ART. 353.—The existing legal hypothecations, the inscriptions whereof as special hypothecations can be required in conformity with what is laid down in the Article 347, shall be those which at the publication of this law may be in existence with the character of tacit hypothecations;—

- 1st. In favor of the public exchequer over the property of those who manage the funds thereof or contract therewith, and over the property of taxpayers who owe more than one year's amount of the taxes which burthen the same immoveable property.
- 2ndly. In favor of women over the property of a third party who has promised to endow them.
- 3rdly. In favor of the husband over the property of the wife who has engaged to bring a dowry, or over the property of a third party, who may have made a like promise for her.
- 4thly. In favor of minors or parties under incapacity over the property of their guardians or curators, or of the heirs of the latter, if those they represent should have died without their having had their accounts passed.
- 5thly. In favor of children over the property of their mother, and that of their stepfather, if she should have been their guardian and curatrix, and should not have proved her accounts.
- 6thly. In favor also of minors over their own property which has been sold, and the price whereof has not been fully paid.
- 7thly. In favor of the legatee over the property of the testator, if the legacy should not have been paid in full.
- 8thly. In favor of refectionary creditors over the refectionary property for the amounts and effects advanced, and not satisfied for the building or repairing.
- 9thly. In favor of vendors over the thing sold for the price thereof, the payment for which has not been fixed for a future day.

ART. 354.—Those, who at the time of the publication of this law are found in the enjoyment of either of the general hypothecations which previous legislation established, shall not be able to require the constitution and inscription of a special hypothecation, according to what is laid down in Article 347, and saving what is prescribed in the Article 365, and those following :

- 1st. In favor of married women over the property of their husbands for dowry and paraphernalia which may have been delivered to them.
- 2ndly. In favor also of married women over the property of their husbands for the dowry and wedding gifts which the latter may have presented to them.
- 3rdly. In favor of children over the property of their parents, for such as has the character of reserved property.
- 4thly. In favor of children over the property of their parents for property of their *peculio*, which the latter have the usufruct of and manage.
- 5thly. The analogous hypothecations which the *fueros* or laws may have established.

ART. 355.—The hypothecations set forth in the preceding article, and which may be in existence at the time of publication of this law, shall subsist in conformity with the previous legislation, while the obligations which the former guarantee are in subsistence, unless by the will of both parties, or by that of the party bound, they be substituted by special hypothecations, or shall cease to have effect as regards a third party in virtue of the decree pronounced in the judgment of liberation established by the Article 365 and those following.

ART. 356.—Those who at the time of publication of this law

may have charged their property with any tacit legal hypothecation of those included in the Articles 353 and 354 can require at any time from the person in whose favor they may have the same obligation that he do accept in its place a sufficient special and express hypothecation.

If the same person refuse to accept the hypothecation offered, or, if accepting the offer, there should not be agreement between the parties interested as to the amount of the obligation which has to be secured, or on the sufficiency of the property offered in guaranty, the Judge shall decide in the form prescribed in Article 165.

These hypothecations shall take effect according to the rule laid down in Article 352.

ART. 357.—What is laid down in the foregoing articles shall neither alter nor modify the preference given by the laws in property which is not immoveable, nor the real rights imposed thereon, to the persons in whose favor legal hypothecations may have been constituted.

ART. 358.—Those who at the time of publication of this law have in their favor any revocatory or invalidatory action proceeding from rights which in the future do not have to produce effect as respects a third person, without the inscription thereof conformably to Articles 16, 36 and 144, shall be able to exercise it within a year, computed from the time when the same law commences to have force, if—before doing so it has not been barred by prescription.

ART. 359.—If the rights to which the preceding article refers were not capable of being enforced within the year on account of the condition on which they depend not having been fulfilled, he who has them

in his favor may require that the person himself bound do secure them by a special hypothecation, and, in case of there being a third possessor of the property, that it do carry with it the obligation.

ART. 360.—The period of one year having expired without use having been made of the revocatory or invalidatory actions to which the Article 358 refers, or without the guaranty whereof the Article 359 treats having been obtained, the said actions shall not be able to be exercised in prejudice of a third party if the right has not been secured by special mortgage.

ART. 361.—The amount, the sufficiency and the effects of the hypothecation which has to be constituted in conformity with what is laid down in Article 359 shall be determined by the rules fixed in the Articles 348 and 349.

ART. 362.—Legal hypothecations existing at the publication of this law in favor of legatees and refectionary creditors shall be inscribed within the year prefixed in the Article 347 as preventive annotations.

Refectionary creditors shall be able to make the annotation in the said term, not only for the sums advanced, but likewise for those that may be advanced during the said term.

With reference to the first advances the annotation shall produce effect from the time of their delivery, and with reference to the second from the date thereof.

ART. 363.—The following shall have the right of effecting the legal inscriptions expressed in the Article 353 within the term specified in Article 347.

In the case of the first number of the said Article 353, the general directions of the administration of the State and the governors of provinces when it

appertains to them, in the form which the regulations prescribe.

In the cases of Nos. 2 and 3 the husband and the wife, in case of there being such.

In the case No. 4 the ascendants, the relatives within the fourth civil degree, and in default of the same the Justices of the Peace.

In the case No. 5 the son, if he be of full age, and, if he be not so, the persons whom the Article 205 specifies.

In the case No. 6 the guardians, the ascendants, the relatives within the fourth civil degree, and, in default of the same, the Judges of First Instance who may have authorized the alienation.

In the cases Nos. 7, 8 and 9, the parties interested themselves, or their legitimate representatives.

ART. 364.—In order to inscribe within the year the legal hypothecations mentioned in Article 353, there shall be presented the title in virtue whereof the same have been constituted as special mortgages.

If there be no title a judicial order shall be indispensable.

ART. 365.—Those who at the publication of this law may have burthened their property with any legal hypothecation of those comprised in the Articles 353 and 354, and shall not make use of the right which the Article 356 gives them, or with any other charge arising out of the rights to which the Article 358 refers, shall be able to set them free in the form which the following articles prescribe.

ART. 366.—The owner who may find himself in any of the cases foreseen in the preceding article shall be able to have recourse to the Judge, shewing the immoveable property he possesses, with a statement of the class

of legal hypothecation or hidden burthen by which the same is or may be affected, or of its not being so by any, the names and particulars of the persons in whose favor the said charges may exist, or with a statement that they are not known, or that he is ignorant of their place of abode, and his desire to free all the said property or, if specifically certain of it, asking in consequence thereof that a term may be specified for such persons to solicit the constitution of a special hypothecation in substitution of the general one under warning, that if it be not done within the term that may be specified, the charge or hypothecation is to be taken as extinguished as respects a third party who may subsequently acquire the ownership or real right over any of the property tacitly burthened, and that it may be set free.

ART. 367.—The petition putting forward formally the claim mentioned in the preceding article shall be presented with the titles which prove the ownership of the property before the Judge of the domicile of the person who has to be cited, and if none should be designated, or those designated should reside in different districts, before the Judge of that one wherein all or the larger portion of the property which has to be liberated is situate.

ART. 368.—If the hypothecation or legal charges be of those whose replacement by special hypothecations can be required by other than the party who has them in his favor, according to Articles 182, 183, 184, 195, 205, 206, 212, 217 and 363, the demand shall be understood to be with him who respectively has the right to require the hypothecation in the name of the party interested according to the articles referred to, and if there be more than one having equal

right, with all or with the one whom the Judge may designate.

ART. 369.—The petition being presented in the form which the Article 366 prescribes, the Judge will order an act to be drawn up, and if a known person be designated, interested in the liberation, a term shall be specified to him, which shall not be less than 30 days, nor exceed 120, for bringing the action pointed out in the same article under the warning solicited.

This decree shall be made known in the form established for a summons, by the Articles 228 to 231 of the Law of Civil Procedure (*a*).:

ART. 370.—If a known person interested in the liberation be not designated, and even if one be designated but without prejudice in the latter case to the intimation provided for in the previous article, the Judge shall direct that the absent or unknown parties interested be cited and summoned by edicts, assigning for them a term which shall not be less than 60 days nor exceed 120, in order that within it they may present themselves to bring the action mentioned in Article 366, under the warning which is therein prescribed.

ART. 371.—The term prefixed in the foregoing article shall be granted in the following manner;—first, there shall be specified that of 60 days; should the Judge think it fitting according to the circumstances of the case, he shall extend it for 30 days more, publishing new edicts,—and even if it should appear desirable to him he shall grant a new prorogation for other 30 days, with like publication of edicts.

ART. 372.—The edicts shall be fixed in the chief town of the judicial district, in the towns where the property is situate the liberation whereof is in question, and in

that of the domicile, if it be known, of those who have possessed the property during the last ten years; and further they shall be published in the official periodicals of the province where the suit is prosecuting, in those of the province where the property is situate, if they be distinct, and in the *Gaceta de Madrid*.

ART. 373.—On notifying to the party interested the decree whereof the foregoing article treats, there shall be delivered to him a notice signed by the notary, setting forth,

- 1st. The christian and surname, domicile, state and profession of the applicant.
- 2ndly. The statement of property which the latter has presented.
- 3rdly. The designation of that which he proposes to set free.
- 4thly. The class of legal hypothecation or unseen burthen by which the said property is affected according to the shewing of the said applicant.

ART. 374.—The edicts referred to in the foregoing article shall express,

- 1st. The christian and surname, domicile, state and profession of the applicant.
- 2ndly. The statement of the property which the latter proposes to set free, pointing out its situation, name, number and boundaries, the title of the last acquisition and the name of the previous owner.
- 3rdly. The information which the applicant has given as to the class of hypothecation or burthen which the said property may have, or its not having according to his judgment any.
- 4thly. The term specified by the Judge to exercise the

right of action of hypothecation, with the corresponding warning.

ART. 375.—The extensions of time that may be granted to parties interested, absent or unknown, shall be equally understood as granted to those present for the purpose of making use of their right, but without the terms granted both to one and the other being able to exceed one hundred and twenty days in any case.

ART. 376.—When the property which it is proposed to set free is hypothecated in favor of the public exchequer, the intimation shall be made to the Governor of the respective province, or to the Director General to whom the matter which has given rise to the hypothecation appertains.

In either of these cases the maximum term mentioned in the foregoing article shall be granted by the Judge.

ART. 377.—During the period specified those who have in their favor any tacit hypothecation or charge not inscribed of those mentioned in Article 358 may make application, either soliciting a special hypothecation for securing their right, or shewing that without renouncing their general hypothecation they renounce it as to all or any of the property which they specifically propose to set free.

In the first case, a copy shall be given to the petitioner of the claim of the party interested, who may apply to the Court, and the constitution of the hypothecation shall be proceeded with in the form prescribed in Article 165.

In the second case, the property which is specified shall be held as freed from every hidden charge or hypothecation in favor of the party who may have

appeared, but without prejudice as to such as may exist in favor of other persons should they be claimed within the term.

ART. 378.—Should various interested parties apply in solicitation of different hypothecations, all of them shall be heard in one and the same suit, and none of the property shall be declared free until a final sentence be pronounced on their claims.

ART. 379.—The term fixed by the Judge having run out without any claim having been presented, and it not being capable of extension, or the said Judge not deeming it desirable to extend it, the property, the liberation whereof may have been solicited, shall be declared on a new petition of the applicant free from every tacit hypothecation and uninscribed charge.

Should any interested party make reclamation, a like decree shall be pronounced as soon as a decision shall be come to on his claim, setting free the property in such case without prejudice to the special hypothecations which by virtue of the same judgment are constituted on all or any of it, or to the legal tacit hypothecation on others if this reservation should have been made.

ART. 380.—The decree of liberation shall express,

- 1st. The name, situation, number, boundaries and ownership of each of the properties that may be set free.
- 2ndly. The fact of its being pronounced on hearing of the opposite side or without hearing.
- 3rdly. The fact of there having been or there not having been constituted a special hypothecation for securing the rights that may have been previously guaranteed by a legal hypothecation or charge not inscribed.

4thly. The fact of there not having been in such case constituted another special hypothecation on account of the parties having renounced their tacit hypothecation of the property which may be set free, the same being reserved over the rest that the owner possesses or may acquire.

5thly. The fact of there remaining free from every charge not inscribed and legal mortgage the properties set free, excluding, in case of there being such, the special hypothecations which may be constituted upon them, expressing what such hypothecations may be.

ART. 381.—The possessors of immoveable property or real rights who may desire to free them from all legal hypothecations and hidden burthens, or burthens raised in favor of persons unknown, may obtain such liberation by taking the steps laid down in Articles 365 and following ones, with the modifications following :

1st. The petition shall be presented to the Judge of First Instance of the place where the property which it is desired to set free is situate.

2ndly. The Judge shall assign a term of sixty days in order that within that term the parties interested may shew the rights which belong to them, and shall announce this decree by edicts which shall be stuck up in the town the chief of the judicial district, in the towns where the property the liberation whereof is in question is situated, and in the town of the domicile, if it be known, of those who may have possessed it in the last ten years.

3rdly. The edicts shall likewise be published in the *Boletin Oficial* of the province where the suit is

being prosecuted and in the *Gaceta de Madrid*, annexing to the proceedings the copies wherein the publication is made.

4thly. The term fixed having run out, if it be solicited, fresh edicts shall be affixed for the term of other sixty days in the form prescribed in the two preceding rules.

5thly. There shall also be heard in every case the fiscal attorney of the judicial district before pronouncing a definitive decree, in order that he may shew whether the formalities prescribed in the law have been observed in the proceeding.

ART. 382.—The decree of liberation shall be made known to the parties interested who may have had recourse to the Court in the same form as that of the assignment of the term, and it shall be inscribed by means of a note in the margin of the last inscription of ownership of each one of the properties set free.

For this purpose there shall be given to the owner of the said properties an official copy of the decree referred to.

ART. 383.—He who at the time of publication of this law may have burthened different properties owned by him with an annuity or voluntary hypothecation, the capital whereof may not have been divided between them, shall have the right of requiring that the same be divided amongst those which suffice to answer for thrice the amount of the same capital, in conformity with what is prescribed in the Article 96.

If only one of the properties charged should suffice to answer for the said sum, he shall also be able to require that the burthen be reduced to that one.

If two or more of the properties should have to remain burthened, each one must be sufficient to answer for thrice the amount of the portion of capital that may be specified for it.

ART. 384.—The creditor or life annuitant may also require the division and reduction of the burthen, in the case foreseen in the preceding article, should the debtor or grantor of the annuity not make it.

ART. 385.—Should the properties charged with life annuities, or hypothecated in the form mentioned in the Article 383, be not sufficient to cover with their value threefold the capital of the annuity or debt, the division of the said capital among the same properties shall only be able to be required in proportion to what they may respectively be worth, but not the liberation of any of them.

ART. 386.—The division and reduction of the annuities and hypothecations whereof the foregoing articles treat shall be made by mutual agreement among those who have an interest in the subsistence of some or other of them.

Should there not be accord among the parties interested, or should either be a person unascertained, the said division and reduction shall be decreed by the Judge in the ordinary Court, and on hearing the fiscal attorney, should there be unascertained or unknown parties interested.

ART. 387.—On the division and reduction of the annuity or hypothecation being made by agreement among the parties interested, the same shall be evidenced by a public instrument.

When there have preceded a suit and sentence pronounced, the Judge shall issue the corresponding order.

ART. 388.—By means of the presentation of the instrument or of the judicial order, if there should be such, inscription of the new charge or hypothecation shall be made in the register in the form in which it stands constituted, and the former ones, which they have to supersede, shall be cancelled, should they have been inscribed.



CHAPTER XIV.

OF THE INSCRIPTION OF OBLIGATIONS ENTERED INTO, BUT NOT INSCRIBED BEFORE THE PUBLICATION OF THE PRESENT LAW.

ART. 389.—Those who, at the time of publication of this law, may have acquired and not inscribed property or rights which under it have to be inscribed, may inscribe them within the term of one year, computed from the date on which the same law begins to come into operation.

ART. 390.—Should the acquisitions of immoveable property or rights whereof the preceding article treats have taken place ninety or more days previous to the publication of this law, they shall be inscribed free of the dues on hypothecations and of the penalty which the owner may have incurred, and on paying only to the Registrar one-half of the fees which may have been fixed for the respective inscription.

Should the acquisition have taken place within the said period, and should not be of those which had to be inscribed according to previous laws and dispositions, it shall also enjoy the advantage fixed in the preceding paragraph.

Should it be of those which had to be inscribed according to previous dispositions, the inscription shall be made in conformity with what these dispositions require, in so far as respects rights, fines and fees of the Registrar.

ART. 391.—The inscriptions which may be made in the aforesaid term of one year in conformity with what is laid down in the two preceding articles shall not take effect as regards a third party, except from the date thereof, whatever may be the date of the acquisition or charge to which they refer, if the right inscribed do not appear from the titles of ownership at the time of their last acquisition.

If such right appear in the titles, the effects of the inscription shall be retrospective to the date whereon the right may have been acquired by the owner.

ART. 392.—The term of one year having run out, immoveable property or rights acquired previously to the publication of this law may likewise be inscribed, but such inscriptions, although they may refer to rights the existence whereof is shewn by the titles of ownership at the time of their acquisition, shall not prejudice or favor a third party, save from the date thereof, and shall involve dues and fees double those which may have been respectively laid down for it.

ART. 393.—He who at the publication of this law may have acquired any right of those which may be annotated preventively according to what is disposed in Nos. 1, 3, 4, 5 and 7 of the Article 42, shall be able to solicit the annotation thereof within the term of the year specified in Article 389, and that which he may obtain shall take effect from the

date whereon the act annotated ought to have effect in conformity with the earlier legislation.

The annotation may also be made after the said term, but in no case shall it take effect except from its date.

ART. 394.—In the case contained in No. 6 of the same Article 42 the term of one hundred and eighty days for asking for the annotation of the legacy the right whereof may be already acquired shall commence running from the date whereon this law begins to take effect.

ART. 395.—The orders of embargo whereof note has not been already taken in the registers in conformity with what is disposed in the Law of Civil Procedure shall not produce effect as to a third party, save from the date of their annotation, but without prejudice to what is laid down in No. 2 of the Article 37, and in the Articles 39, 40 and 41 on alienations made in fraud of creditors.

ART. 396.—After the publication of this law there shall not be admitted in the ordinary and special courts and tribunals, in the councils and in the offices of the government, any document or deed of which note has not been taken in the registry, if thereby there be constituted, transmitted, acknowledged, modified or extinguished rights subject to inscription according to the same law.

ART. 397.—The owner who may be wanting in a title of ownership in writing must inscribe his right, previously proving his possession before the Judge of First Instance of the place wherein the property is situate, with audience of the fiscal attorney if it be proposed to inscribe the full ownership of any property, and also with hearing of the owner and that

of the other participators in the ownership if it be proposed to inscribe a real right.

Should the property be situate in a town or district where no Judge of the First Instance is resident, the said information may be made before the respective Justice of the Peace with audience of the syndic of the corporation in all cases where the fiscal attorney ought to be heard.

The intervention of the fiscal attorney or of the syndic shall be confined to taking care that the forms of law be observed in the act.

ART. 398.—The petition, wherein the admission of the information whereof the foregoing article treats is solicited, shall express—

1st. The nature, situation, superficial measure, boundaries, name, number and real charges of the property the possession whereof it is proposed to prove.

2ndly. The legal nature, value, conditions and charges of the real right the possession whereof is being treated of, and the nature, situation, boundaries, name and number of the property on which that charge may be imposed.

3rdly. The christian and surname of the person from whom the immoveable property or right may have been acquired.

4thly. The time he may have had possession.

5thly. The circumstance of no written title being in existence, or of its not being easy to find it in case of its being in existence.

ART. 399.—The information contemplated in Article 397 shall be proved by two or more witnesses, persons of property, of the town, or landowners where the property may be situate.

ART. 400.—The witnesses of whom the foregoing article treats shall shew that they have the qualities therein referred to, presenting the documents which prove them; they shall limit their declarations to the fact of the party moving in the matter possessing the property in his own name and the time that the possession has continued, and shall be answerable for the undue losses which they may give rise to by inaccuracy in their depositions.

ART. 401.—He who proposes to inscribe his possession shall present also the receipt for the last quarter's territorial tax that he may have paid.

Should he not have paid any by reason of his acquisition being recent, notice of the proceeding shall be given to the person from whom the immoveable property comes or to his heirs, in order that they may shew if they have anything to oppose to the inscription.

If he who solicits it be the heir of the previous possessor, he shall present the last receipt for the tax which the latter may have paid.

ART. 402.—If the part-owner in the property or in the rights in a property who has to be cited should be absent, the Judge shall appoint him to appear personally or by his attorney within the term that he may deem necessary, according to distance.

Should his place of abode be unknown, or the said term having expired the party cited should not appear, the act shall be approved and the inscription of the right ordered to be made, without prejudice to what may belong to the said part-owner, it being mentioned that the latter has not been heard in the information.

The inscription shall in such case also express the said circumstances.

ART. 403.—Whoever believes that he has a right to the property, the inscription whereof is solicited by means of an information of possession, shall be able to allege it before the competent Judge in the ordinary court.

The interposition of this demand and its inscription in the register shall suspend the course of the proceeding of information, or the inscription of the same, if it should be already concluded and approved.

ART. 404.—The information taken in the form provided in the foregoing articles being sufficient, and there not being opposition by a legitimate party, or that which may have been made being disallowed, the Judge shall approve the act, and shall direct the inscription solicited to be made in the register, without prejudice to a third party having a better right.

ART. 405.—The possessor who may have obtained the decree mentioned in the preceding article shall present in the registry the original proceedings which had to be delivered to him for this purpose, and shall solicit in virtue thereof the corresponding inscription.

ART. 406.—The inscription that may be made shall express all the circumstances referred to in Article 398, and also the names of the witnesses who may have made declaration, what resulted from their declarations, what from the other proceedings taken in the matter, the opinion of the fiscal attorney and the special circumstances of the inscription according to their character in so far as they may be shewn by the said proceedings.

ART. 407.—The Registrars before inscribing any property or right in virtue of informations, shall carefully examine the register in order to discover whether there be

therein any entry relating to the same immoveable property which may be wholly or partially cancelled in consequence of the new inscription. Should they find any entry of acquisition of ownership not cancelled, which may be in contradiction of the fact of the possession proved, they shall suspend the inscription, make a preventive annotation and remit a copy of the said entry to the Judge who may have approved the information. The Judge on view thereof shall communicate the proceedings to the person who by the said entry may have any right over the said immoveable property, and on hearing he shall confirm or revoke the decree of approbation, giving knowledge in any case of the decision which he may come to to the Registrar, in order that on view thereof he may carry into effect the inscription or cancel the preventive annotation.

Should the Registrar find any uncanceled entry of a life annuity, hypothecation or any real right imposed on the property which has to be inscribed, he shall mention it in the inscription which he shall draw up.

ART. 408.—The inscription made in virtue of proof of possession shall prejudice or favor a third party from its date, and only so far as the effects which the laws ascribe to mere possession.

ART. 409.—The inscription of possession shall not prejudice in any case him who has a better right to the ownership of the immoveable property, although his title may not have been inscribed.

As between the parties the possession shall produce effect when it ought to produce it in conformity with the common law.

ART. 410.—What is disposed in the foregoing articles on

inscriptions of possession shall not be applicable to the hypothecatory right which shall not be inscribed, save by means of the presentation of the title inscribed.



CHAPTER XV.

OF THE BOOKS OF REGISTRY ANTERIOR TO THIS LAW, AND THEIR RELATION TO THE NEW ONES.

ART. 411.—All the books of the registry existing in the accountants' offices of mortgages (*contadurias de hipotecas*) at the time of the publication of this law, shall be closed in the state in which they may be on the day which the Government may appoint for taking possession by the new Registrars.

ART. 412.—The books mentioned in the foregoing articles shall be closed with the following formalities:—

First. The Judge of the First Instance of the district, or the chief Judge where there may be more than one, the Registrar named, and the accountant going out of office, shall personally assist at the proceeding.

When the appointment of Registrar shall fall on the latter, the fiscal attorney or the chief of the fiscal attorneys, if there be more than one, shall likewise assist.

Second. The Registrar and the accountant or the fiscal attorney, if there be one acting, shall put in continuation of the last entry made in each book a certificate setting forth—

1stly. What is the last entry.

2ndly. The total number of pages which the book contains.

3rdly. How many of these pages are written on, and how many in blank.

4thly. The number of leaves there may be with spaces between some entries and others, or not filled, or mention of there not being found any of these circumstances.

5thly. The number of entries there may be in each one of the said leaves.

Third. The leaves in blank and spaces which may be discovered in the writings shall be drawn through in such manner that no entry may be afterwards made.

Fourth. The index books shall be closed, the Registrar appointed or the public attorney, in case of there being such, putting at the end of the last entry made by the outgoing accountant, a certificate expressing the circumstances contained in the numbers first, second and third of the second Rule, rendering useless the leaves in blank and the spaces, in conformity with what is laid down in the foregoing Rule.

Fifth. The Judge of First Instance shall seal with the seal of the court all the leaves written upon, and shall pronounce a decree approving the proceeding, which shall be written in continuation of the certificate of the Registrar, accountant or fiscal attorney, should he have been present in the act.

ART. 413.—The Registrars, after fulfilling what the fourth rule of the preceding article prescribes, shall examine the indices existing in the then registries; should they find them incomplete or inaccurate, they shall complete or correct them if susceptible of it. Should there not be any, or those which there may be should be useless, they shall form others afresh in the form prescribed in this law.

ART. 414.—In the margin of every inscription entered in the old books, which after they may be closed may be cancelled in the new books, there shall be put a note expressing the said cancellation and the book and folio in which it is found.

ART. 415.—In every inscription, preventive annotation or cancellation that may be made in the new books of the property or right inscribed, under whatever character in the old books, there shall be quoted the number, folio and number of the book wherein the said entry is found.

ART. 416.—The entries that may be made in the new indices, relative to property or rights inscribed in the old books shall contain the note mentioned in the previous article, besides that corresponding to the new books.

Madrid, 3 July, 1860.

The Minister of Grace and Justice,
SANTIAGO FERNANDEZ NEGRETE.

TABLE

Of FEES to be received by Registrars.

N.B.—The value of the *real* may be taken at about 2½*d.* English,
or 95 to the £1 sterling.

	Reals.	Cents.
1. For examination and entry of presentation of every title whereof inscription, annotation or marginal note is solicited, there being understood by one title all the documents which have to give place to one only entry of presentation	2	0
2. For every line of inscription or annotation of twenty-four syllables at the least which may be made in the register of ownership, or in that of hypothecations, in the order of the dates, and not being of those transferred from previous registers	0	40
3. Should the titles which the Registrar has to examine exceed twenty leaves, he shall further receive for each in excess	0	10
4. For each line of like number of syllables of inscription transferred from the said old registers to the new ones	0	10
5. For each entry of reference of mortgage which may be made in the register of ownership on reference to the corresponding principal one in the register of hypothecations.	1	0

	Reals. Cents.	
6. For every marginal note which may be the consequence of another inscription relating to the same property made at the same time, or for which fees may be paid	1	0
7. For the marginal note which may not be included in the foregoing number	4	0
8. For the proceeding of rectification of those interested in any inscription or preventive annotation which has to be made or cancelled on direct petition to the Registrar . .	6	0
9. For the note which has to be put on the title which is returned to the party interested, expressing the inscription to be made or suspended	2	0
10. For the production of the register of ownership or hypothecations for each property . . .	4	0
11. For the cancellation of every inscription or preventive annotation	6	0
12. For a literal certificate of entries of every class, for the first page, whether or not it be filled throughout	8	0
13. For each one of the second and subsequent pages of the said certificates, there being calculated for each page twenty-six lines of twenty syllables	4	0
14. For the certificate in relation, by way of abstract, for each one of the entries of inscription and preventive annotation or presentation pending which it may contain	6	0
15. For a certificate of the non-existence in the registry of any entry of those searched for . .	8	0
16. For search in the old registers in order to give certificates of which the three preceding		

	Reals.	Cents.
numbers treat, for each year the entries wherein are consulted.	1	25
17. For every inscription, annotation, cancellation or marginal note of a title relating to a pro- perty or right, the value whereof does not exceed 500 reals, including the entry of presentation, marginal note and every other entry necessary in order that the said title may be duly inscribed	0	50

APPENDIX.

NOTE A.—*Containing Articles of the Spanish Codes referred to in the Text.*

ART. 922.—Sentences pronounced in foreign countries shall have in Spain the force that the respective treaties give them.

ART. 923.—Should there be no special treaties with the nation wherein they may have been pronounced, they shall have the same force that is given there by the laws to judgments pronounced in Spain.

ART. 924.—Should the judgment proceed from a nation where, by the jurisprudence, fulfilment is not given to judgments pronounced in Spanish tribunals, it shall not have force in Spain.

ART. 925.—Not being comprised in either of the cases whereof the three preceding articles speak, judgments shall have force in Spain, if they combine in themselves the following circumstances:—

1st. That the judgment has been pronounced in consequence of the exercise of a personal action.

2nd. That it has not been pronounced in contumacious absence.

3rd. That the obligation for the performance of which it has issued is lawful in Spain.

4th. That the judgment contain in itself the requisites necessary in the nation in which it may have been pronounced in order to be considered authentic, and those which the Spanish laws require in order to make it evidence in Spain.

ART. 926.—The execution of sentences pronounced in foreign countries shall be solicited in the supreme tribunal of justice.

This Court, after translation of the judgment has been made in conformity with law, and after hearing the party against whom it is directed and the fiscal attorney, shall declare whether it ought or ought not to be fulfilled.

NOTE B.

ART. 891.—The sentence of the First Instance being acquiesced in, or the proceedings in the Inferior Court being received with executory decree, if there have been an appeal, and the same being made known to him who may have obtained it, execution of the sentence shall be proceeded with.

ART. 892.—Should the sentence contain a condemnation to the payment of a liquidated and determined sum, the seizure of property always, at the instance of the party interested, shall be proceeded to, in the form and in the order laid for the executive judgment.

ART. 893.—The seizures being made, they shall proceed to the valuation and sale of the property comprised therein and to payment in case such has to be made, in entire subjection to the rules fixed for the proceeding of seizure after executive judgment.

ART. 894.—Costs which may be incurred in the proceedings for the fulfilment of executory decrees shall be charged to the party condemned by them.

ART. 895.—Should the sentence contain a condemnation to do or not to do, or to deliver something, they shall proceed to give fulfilment thereto, employing the means necessary for the purpose.

ART. 896.—If the party condemned to do something should not comply with what he is ordered to do for the execution of the sentence, within the term that the Judge may allow him for the purpose, it shall be done at his cost; and if on account of its being entirely of a personal character, the act cannot be effected in this form, it shall be understood that he prefers the compensation of prejudices.

Should the amount of the latter be fixed in the sentence, to meet the case of non-performance, they shall proceed to what, with reference to the fulfilment of the sentence wherein there may be a condemnation to an unliquidated amount, is provided in Article 892.

Should the same not be fixed, there shall be observed what is laid down in Articles 910 and following ones, with reference to the sentence wherein there may be a condemnation for an unliquidated sum proceeding from prejudices.

ART. 897.—Should a party condemned not to do a thing break the sentence it shall be understood that he elects for the compensation for prejudices, which shall be indemnified to the successful party in the terms laid down in the preceding Article.

ART. 898.—Should the sentence condemn to the payment of an unliquidated sum, arising from fruits, the debtor shall be bound, within a term that the Judge may fix according to the circumstances of the case, to present the liquidation thereof in conformity with the bases that in the said sentence may have been fixed.

ART. 899.—The liquidation shall be laid before the creditor.

ART. 900.—It being agreed upon, there shall be ordered to be realized the sum which may have been agreed upon in the manner and form previously indicated.

ART. 901.—It not being agreed upon, the Judge shall call together the par-

ties to a verbal Court, notifying to them that therein they will have to present proofs on the facts whereon they may not agree.

ART. 902.—Between the convocation and holding of this Court the time must intervene which, according to the circumstances of the case, the Judge may deem necessary in order that the parties may be able to procure for themselves their proofs.

ART. 903.—During this term the proofs shall, with the corresponding citation, be taken, which the parties may propose and that have to be obtained out of the place of residence of the Court.

These proofs must be concluded before the day fixed for the verbal Court wherein they have to be presented.

ART. 904.—The day for the Court being fixed, it shall not be capable of being altered without the consent of the parties interested.

ART. 905.—The day fixed having arrived and the parties being met together, the Judge shall hear them or their *defenders*; he shall receive from them the proofs that they may adduce the proper act being drawn up, which all the parties at the Court shall sign, and the notary shall authorize.

ART. 906.—Within the three following days, the Judge shall pronounce sentence, fixing and determining therein the amount which has to be paid in conformity with the decree and the proofs taken.

ART. 907.—This decree is open to appeal in both recourses. On recourse to appeal being interposed the proceedings shall be remitted to the Superior Court, formally summoning the parties.

ART. 908.—Should the party appealed solicit execution of the sentence, it shall be decreed on his giving security sufficient in the opinion of the Judge to answer at any time for the difference that there may be between what the appellant acknowledges himself debtor for and what may have been determined by the sentence.

In this case evidence of the sentence shall be preserved in order for its fulfilment.

ART. 909.—Should no appeal be made the sum mentioned in the sentence shall be proceeded to be realized in manner before laid down.

ART. 910.—Should the sentence condemn to the payment of an unliquidated sum proceeding from prejudices, he who may have obtained it shall present a statement of them with the petition that he presents for the fulfilment of the decree.

ART. 911.—The statement shall be laid before him who may have been condemned, there being observed what is laid down in Articles 900 and following ones.

ART. 912.—If a sentence should contain a condemnation to the payment of a liquidated sum and of another not liquidated, the first can be made effective without the necessity of waiting to have the second liquidated.

ART. 913.—The debtor not presenting the liquidation within the term that may be assigned to him for the purpose, there shall be granted to him another not exceeding one-half of the first, under warning that on not presenting it before it expires he will have to stand to and act by what he who may have obtained the decree presents in every thing that he does not shew to be wrong.

ART. 914.—The said term having expired without the debtor having presented the liquidation, the other party shall be notified to form and present it.

ART. 915.—The liquidation presented by the creditor shall be laid before the debtor for a time that shall not exceed six days, exposing it for the purpose to view in the notary's office.

ART. 916.—If he should concur therein or should not raise opposition within the term fixed in the foregoing article, the Judge shall approve it and shall proceed to make effective, in the form laid down, the sum that may be shewn to be due.

ART. 917.—The decree which in such case may be pronounced approving the liquidation is not open to appeal.

ART. 918.—Should the debtor make opposition within the days specified in Article 915, proceeding shall be taken in the manner prescribed in Articles 901 and following ones to meet the case wherein there has been no concurrence in the liquidation arising from fruits.

In the sentence which may be pronounced, the liquidation presented by the creditor shall be approved in everything that the debtor has not shewn to be incorrect, and that may be in conformity with the bases fixed in the sentence for making it.

ART. 919.—In all cases in which appeal may be made from sentences on the liquidation of sums, the amount whereof may not have been fixed in the sentences, the following steps shall be taken.

- 1st. The proceedings being remitted to the *Audiencia*, they shall be handed in for instruction for six days, incapable of extension, to each one of the parties.
- 2ndly. They being returned shall be passed to the *relator* for other six days, in order that he may add the minute.
- 3rdly. The said six days being passed, the day shall be fixed whereon the view has to be made.
- 4thly. The view being concluded, the decrees shall be passed to the ministry deciding for six days.
- 5thly. Within the three following days the sentence shall be pronounced; against which no appeal shall be allowed.
- 6thly. The proceedings shall be forthwith returned to the Court whence they issue, with certification only of the sentence that

may have been pronounced and of the valuation of the costs, if condemnation therein have been made.

ART. 920.—The appellant not appearing and the days fixed in the summons having expired, the proceedings shall be returned to the Court in order that the sentence appealed against may be carried out.

ART. 921.—The nonappearance of the respondent shall not be an obstacle to the substantiation of the second instance.

NOTE C.

ART. 953.—Of every seizure of real property note shall be taken in the *contaduria de hipotecas* (office of mortgages) of the district, there being delivered for the purpose the proper order in duplicate; one of them, after being carried out, shall be annexed to the proceedings, and the other shall remain in the said office of mortgages.

NOTE D.

ART. 228.—The summons shall be made by means of a note, which shall be delivered to the defendant, if he be met with; and if he cannot be found, to his wife, children, relations who live in his house, servants or neighbours.

The minute of this shall be drawn up in the proceedings, and shall be signed by the notary and by the person to whom the delivery may be made.

If the latter do not know how, or is unable or is unwilling to sign, that shall be done which is provided with reference to notifications in Article 22 of this law.

ART. 229.—When the person who has to be summoned does not reside in the town wherein the suit is brought, the summons shall be made by means of an order communicated to the Justice of the Peace of the place where he may be met with. Should he reside in another judicial district, it shall be done by means of a letter of exhortation addressed to the Judge thereof. The dispatch or the order shall be delivered to the plaintiff.

In these cases the Judge who has cognizance of the matter can enlarge the term of the summons at the rate of a day for every six leagues of distance that there may be between the place of his residence and that of the defendant.

Both the Judge applied to and the Justice of the Peace, in case of his being so, on the letter of exhortation or order being presented to them, without asking the production of a power of attorney from him who presents it, shall command the summons to be made in the terms prescribed in the preceding article, and

shall deliver the letter of exhortation or order, when fulfilled, to the bearer of the same.

ART. 230.—Should the defendant reside in a foreign country, the letter of exhortation shall be addressed in the form that may be laid down by treaties, or in default thereof in the way which the general instructions of the government may determine.

In this case the Judge shall extend the term of the summons for the time that, having regard to the distance and greater or lesser facility of communications, he may deem necessary.

ART. 231.—Should the domicile of the defendant not be known, he shall be summoned by means of edicts which shall be affixed in public places, and inserted in the official daily papers of the place wherein the suit is being prosecuted, in those wherein he has had his last residence, and in the *Gaceta de Madrid*; this last when the circumstances of the persons and of the matter require it, according to the opinion of the Judge.

Without prejudice to this the proceeding of summons may be effected in any place where the defendant may be found.

ART. 22.—Notifications shall be signed by the notary and by the person to whom they may be made.

Should the latter not know how to sign, or be unable to sign, a witness shall do it on his request.

Should he be unwilling to sign, or to present a witness who will do it for him, two witnesses, called for the purpose by the notary, shall sign.

NOTE E.

ART. 1162.—Every question between parties whose interest does not exceed 600 reals shall be decided in verbal Court (*juicio verbal*).

The cognizance of this proceeding belongs in the first instance to Justices of the Peace; in the second to the Judges of the First Instance of the districts.

ART. 1163.—Should a doubt exist as to the interest in suit, the Justice of the Peace shall decide it, hearing the parties on an appearance before him.

Against his decision on this point there shall be no appeal.

The Judge of the First Instance of the district, nevertheless, on hearing appeal against the definitive sentence, can declare the nullity of the proceeding should the interest therein be found to exceed 600 reals.

ART. 1164.—In order that the declaration of nullity whereof the foregoing article speaks may be made, it is necessary—

1st. That the nullity be demanded before the Judge of First Instance of the district.

2ndly. That the party who makes the reclamation has opposed in the first instance the substantiation of the demand being proceeded with in verbal Court.

ART. 1165.—In the Courts of Justices of the Peace these proceedings shall adapt themselves to the steps that are prescribed in the following articles :—

ART. 1166.—The demand shall be put forward in a paper signed by the plaintiff, or by a witness at his request, if he cannot write.

The paper shall contain—

The name, profession or occupation of the plaintiff and defendant.

The claim that is put forward.

The date whereon it is presented to the Court.

The signature of him who presents it, or of a witness at his request, if he cannot sign.

The plaintiff shall annex also a copy of the paper subscribed in the same way as the latter.

ART. 1167.—The paper being received, the Justice of the Peace shall direct as early as possible the convocation of the parties to a conference, fixing a day and hour for the purpose, by a decree which shall be drawn out at foot of the demand.

The citation to appear shall be drawn up at the foot of the copy of the demand, which shall be delivered to the defendant.

ART. 1168.—In order to prove the delivery of the paper, the defendant shall be made to sign, or if he should be unable, a witness for him, the minute of receipt, the which shall be drawn up at foot of the decree wherein the convocation to the Court has been ordered.

ART. 1169.—Where the defendant resides in a place other than that of the Justice of the Peace who summons him, a writ shall be addressed to the spot where he may be found in order that the citation may have effect—at foot of the writ shall be drawn up a minute of delivery of the copy and the citation.

ART. 1170.—Between the convocation and the holding of the meeting six days at least must intervene.

In the cases where the defendant does not reside in the place where the Court of the Justice of the Peace who may cite him is fixed, the term shall be enlarged one day more for every four leagues that the place of the Court may be distant from that of the residence of the defendant.

ART. 1171.—The appointment made for appearance cannot be altered save for just cause alleged and proved before the Justice of the Peace.

ART. 1172.—The day of meeting having arrived, it shall be held before the Justice and Secretary.

Therein the parties shall expound in turn what may conduce to their right, and afterwards the proofs that they present shall be received.

At these meetings a person whom they may choose can be present accompanying the parties interested and in order to speak in their names.

ART. 1173.—The defendant not appearing, the suit shall continue in his *rebeldia* (contumacious absence) without citing him again.

ART. 1174.—The meeting being concluded, the fitting act shall be drawn up, which all the parties present and witnesses shall sign.

ART. 1175.—The documents presented shall be appended to the proceedings.

ART. 1176.—The day following that of the holding of the meeting the Justice shall pronounce his definitive sentence, which shall be formally notified to the parties.

ART. 1177.—The sentence is open to appeal in both recourses.

ART. 1178.—Appeal being interposed the proceedings shall be remitted to the corresponding Court, with citation of the parties.

ART. 1179.—The proceedings being received in the Court of First Instance, the Judge shall hear the parties at a meeting in conformity with the rules previously laid down.

The same day he shall pronounce sentence.

Against it there is no appeal.

ART. 1180.—The proceedings shall be returned with a certificate of the sentence to the Justice of the Peace for the execution thereof.

NOTE F.

ART. 342.—An incidental matter (*incidente*) being advanced, and the separate paper in such case being formed, a copy thereof shall be given to the co-litigant for the term of six days; of what he may say in reply a copy shall be furnished to the party who put in the incident.

ART. 343.—In case of the parties having agreed that it should be received for proof, or of one only having solicited it, and the Judge deeming it just, the incident shall be received to proof for a term that shall not be less than eight days nor exceed twenty, according to the circumstances of the case.

ART. 344.—Should neither of the parties have solicited proof, the Judge shall command the proceedings to be brought before him for

sentence—and if after this has been ordered, it should be solicited, it shall be refused.

ART. 345.—The proofs having been made and the term fixed having expired, they shall be annexed to the proceedings and shall be commanded to be brought to notice with citation.

ART. 346.—If within the two days following that whereon the citation shall have been made an appointment of a day for hearing should be asked it shall be granted, and on it the counsel of the parties shall be heard.

ART. 347.—When this happens the proofs shall be opened for the inspection of the parties in the office of the notary for instruction for the time that may intervene from the appointment to the day of being put before the Court.

ART. 348.—This having taken place, or if an appointment has not been solicited, the two days following the citation having passed, the Judge shall pronounce sentence within three in either case.

ART. 349.—These sentences are always open to appeal in both recourses.

ART. 350.—An appeal being interposed, it shall be admitted without any substantiation, and the proceedings shall be remitted, or the separate piece, to the Superior Tribunal, with citation and summons of the parties.

ART. 1114.—The following are specially declared to belong to the class of creditors *de dominio* with reference to bankruptcies of merchants:—

- 1st. Dotal property that may be held in the hands of the husband out of what the wife may have brought to the marriage, the receipt thereof being shewn by a public notarial act, whereof note has been taken in the form prescribed in Art. 22.
- 2ndly. Paraphernalian property that the wife may have acquired by a title of inheritance, legacy or gift, whether it has been kept in the form in which she received it, or whether it has been exchanged or invested in other, provided that the same formality has been complied with in the instruments wherein its acquisition is set forth.
- 3rdly. Every species of property and effects that have been given to the bankrupt in deposit, management, lease, hire or usufruct.
- 4thly. Merchandise that the bankrupt may have in his hands on commission for purchase, sale, transit or delivery.
- 5thly. Bills of exchange or promissory notes that may have been remitted to the bankrupt for recovery, without indorsement or expression of value, that shall transfer the property to him, and those that he may have acquired for account of another, drawn or indorsed directly in favor of the sender.

6thly. Property sent to the bankrupt not in account current, in order to its delivery to a particular person in the name and for the account of the sender, or to discharge obligations the fulfilment whereof may have been designated at the domicile of the bankrupt.

7thly. Sums that may be owing to the bankrupt for sales that he may have made for account of another party, and bills or promissory notes coming from the same that may remain in his hands, although they may not be drawn out in favor of the owner of the merchandise sold, provided that it be proved that the obligation be derived therefrom, and that they were in existence in the hands of the bankrupt for account of the owner, in order to realize and forward to him the funds in due time, which shall be presumed in law, if the entry have not been passed in account current between the two.

8thly. Goods sold to the bankrupt to pay in cash the price whereof, or part of it, shall not have been paid while they were in existence in packages in the stores of the bankrupt, or in the terms in which the delivery was made, and in a state to be distinguished specifically by marks and numbers of the bales or packages.

9thly. Merchandise that the bankrupt may have purchased on trust until the material delivery to him thereof has been made in his stores or in the place agreed upon to make it at or until after being shipped by the order and for the account and risk of the purchaser, the carriage notes or bills of lading have been remitted to him.

In the cases put in this paragraph and the preceding one the syndics can retain the goods purchased, or claim them for the estate, on paying their price to the vendor.

ART. 1117.—In case of a second bankruptcy during the same marriage the wife of the bankrupt has no right to claim afresh, preferentially or otherwise, the sum drawn in her favor from the estate of the first bankruptcy by reason of dowry consumed or for *arras*; but she shall be a creditor *de dominio* of the immoveable property or impositions thereon wherein such sum may have been invested; provided that the acquisition have been made in her own name, and that the deed of purchase or investment has been inscribed in due time in the registry of commercial documents.

NOTE G.

ART. 1039.—Contracts entered into by a bankrupt in the thirty days preceding his bankruptcy are reputed fraudulent, and will

remain without force in law with reference to the creditors of the bankrupt that are of the following classes :—

- 1st. All alienations of immoveable property made under a gratuitous title.
- 2ndly. Dotal constitutions made out of his own property to his children.
- 3rdly. Cessions and transfers of immoveable property made in payment of debts not due at the time of the bankruptcy being declared.
- 4thly. Conventional mortgages made on obligations of a date anterior that had not this quality, or on loans of money or merchandise, the delivery whereof was not made *de presente* at the time of the execution of the obligation before the notary, and witnesses who intervened therein.

ART. 1041.—The following can be annulled at the instance of creditors on proof of his having acted in fraud of their rights :—

- 1st. Alienations of real property for a consideration made in the month preceding the declaration of bankruptcy.
- 2ndly. Dotal constitutions or acknowledgments of capital made by a spouse in business in favor of the other spouse within the six months preceding the bankruptcy on immoveable property that was not ancestral, or on that which the consort in whose favor the acknowledgment of dowry or capital may be made may have acquired and possessed previously.
- 3rdly. Every acknowledgment of the receipt of money or effects under the character of a loan, which being made six months previously to the bankruptcy in a public notarial act should not be verified by the evidence of delivery of a notary ; or, having been made by a private document, should not be set forth in like way in the books of the contracting parties.
- 4thly. All contracts, obligations and mercantile operations of the bankrupt that are not anterior by more than ten days to the declaration of bankruptcy.

NOTE H.

ART. 1231.—Should the father have named a guardian for his children, he shall be appointed to the charge in the way that has been laid down by him.

ART. 1232.—Should the father not have relieved the person named from security, he shall not be appointed to the charge unless he have previously given it.

ART. 1233.—Should the mother have named a guardian for her children, he shall be appointed to the charge, security being taken from him, if he have not been relieved therefrom, and without requiring it from him in case of his having this release.

ART. 1234.—What is laid down in the foregoing article shall also be observed in case that any person who may have made a minor his heir, or left him a considerable bequest, has named a guardian for him.

ART. 1235.—Nevertheless the Judge can require security of the guardian named, in the cases whereof the two preceding articles speak, even though there may be a release from it, if in his opinion he do not present sufficient guarantees so that the property of the minor may be deemed secure.

ART. 1236.—Should the minor oppose the appointment of curator made by the mother or by the person who has instituted him his heir or left him a considerable bequest, and the Judge should deem the opposition well founded, he shall be able to refuse the appointment to the charge of the party named.

In case of any question arising upon any of the particulars mentioned in the preceding articles, it shall be substantiated in the ordinary Court, there representing therein the minor—first, the guardian, if there have been one; secondly, he who may have been the guardian *ad litem*; thirdly, and in default of the two preceding ones, the fiscal attorney of the court.

ART. 1237.—There not being a guardian named by the father, mother or person who has instituted the minor as his heir or left him a considerable bequest, the appointment shall appertain to the minor himself.

ART. 1238.—The appointment of guardians must be made by the minors before the Judge by appearance, which they shall subscribe.

ART. 1239.—Should the person named not combine in himself the conditions necessary for the discharge of the office, the Judge shall refuse the appointment and require the minor to name another in his place.

ART. 1240.—The appointment being made, the Judge with audience of the public attorney, if the minor had not previously had a guardian *ad litem*, and on hearing of the latter in place of the other if there were one, shall determine the security which the guardian named may have to give.

ART. 1241.—The same hearing must take place to estimate and approve the security that may be given.

ART. 1242.—The security being approved the charge shall be conferred on the party named.

NOTE I.

ART. 1272.—

4thly. The Judges shall compel the guardians and curators in the cases wherein the discharge of their office is not intended to apply to fruits by way of pension to deposit in the public establishment destined for the purpose the balances of rents or produce of property of minors, after covering the sum named for their maintenance and payment of so much per cent. for management.

5thly. They shall procure the investment of whatever surplus funds there may be, to which no other special application has to be given.

GLOSSARY.

N.B.—*The renderings are mostly very close Translations from standard Spanish Works, but it will be observed that some of the Terms are used in different and even conflicting senses.*

Acreeedor escriturario ;

A creditor who proves his debt by means of a public notarial instrument (*escritura publica*).

Acreeedor hipotecario. See Hipoteca.

Acreeedor refeccionario ;

A preference creditor, by the nature of the loan, when it is made for the purpose of maintaining the debtor or repairing a dilapidated property.

One who has advanced money for building purposes.

Adjudicacion en pago ;

The appropriation or application that is made judicially of the real or personal property of a debtor in favor of a creditor in order to cover the amount due to him.

Administracion ;

The direction, government and care which a man has of the property under his charge of an inheritance, of a minor, of an insane person, of a prodigal, of an establishment or of an individual; so that every guardian, curator or executor has an administration.

Administration is in reality a power of attorney or mandate, and consequently produces the same obligations and rights as this contract.

NOTE.—In the Spanish law a power of attorney is defined to be a consensual contract. A formal acceptance is not unusual, but whether accepted expressly or tacitly the attorney is bound to carry it out, under penalty of making indemnification of losses that may arise.

Anotacion preventiva ;

A preliminary and provisional entry of a claim upon real property by one who asserts himself to be the owner of it or to have a real

right connected therewith; or to be a judgment creditor, &c., or who is a legatee not in a position to institute a testamentary suit, or who presents a title in the registry which, by reason of some defect therein, not incurable, or in consequence of illness, &c. of the Registrar, cannot be definitively inscribed on the register forthwith.

A preventive annotation by a legatee must be made within eighty days of the death of the testator. This annotation gives a preference over other legatees who have not made an entry within the prescribed term.

It gives preference over the creditors of an heir who has accepted the inheritance without benefit of inventory.

See *Beneficio de Inventario*.

Apercibimiento ;

The requirement that a Judge makes of any one to do what he orders or has ordered him to do, threatening him with a fine, penalty or punishment, if he do not do it.

Apremio ;

A Judge's order, in virtue whereof a man is compelled to do something.

Arras ;

Property given by a man to a woman either before or after their marriage. It must not exceed one-tenth of what he possesses.

NOTE.—Marriage by the Spanish law constitutes, as respects profits and property earned or acquired during the joint lives of the husband and wife, a species of conjugal partnership.

See *Bienes gananciales*.

Audiencia ;

The superior tribunal of one or more provinces composed of gowned ministers, and which represents the person of the King in the administration of justice.

Beneficio de Inventario ;

The right which the heir has of remaining free from liability to pay the creditors of the deceased beyond the value of the inheritance, provided that he make a formal inventory of the property whereof the estate consists.

Bienes gananciales ;

Property acquired by the husband and wife by a common title during their marriage and while they live together; or what the husband and wife or either of them during their marriage and living as one may acquire by purchase or by means of labour and industry, as also the fruits of the private property that each brings to the marriage, such property or gains are common to the husband and wife and belong to them in equal proportions, although the husband

may have more property of his own than the wife has, or the wife than the husband, or even though it be only one who acquires such property by trade or labour, because by virtue of the marriage there is established between the consorts a legal partnership, different from others, whereby their acquisitions are reciprocally communicated.

Bienes reservables ;

The property that a widower or a widow who marries again is obliged to reserve or keep for the children by the first marriage.

Censatario ;

He who pays the pensions or periodical sums charged by way of annuity or ground-rent. See *Censuario*.

Censo ;

The contract whereby the right is acquired of receiving an annual pension on delivery of something.

The right itself of receiving the pension.

A perpetual annuity, or one for a term of years.

Censo enfiteutico ;

Ground-rent.

Censualista ;

An annuitant ; a party entitled to a ground-rent.

Censuario ;

The person in whose favor an annuity is granted, or he who has the right to receive the annuity.

NOTE.—Some writers use the word to signify the party who pays the annuity.

Comiso ;

Every description of confiscation.

The reversion of the useful ownership of an *enfiteutic* property to the direct owner in case of the party charged not paying him the tribute, &c.

Property confiscated is also styled *comiso*.

Concurso ;

The suit instituted either by the debtor or by the creditors as to payment of debts.

The meeting of creditors.

Condicion resolutoria ;

The condition which, on being fulfilled, produces the revocation or invalidation of the contract, and restores the things to the state they were in before the contract was entered into.

Consejo de Estado ;

A consultative body of persons chosen by the king to take cognizance of matters of the greatest interest to the government and administration of the kingdom, both home and foreign.

Copia original ;

The first copy, granted and signed by the identical notary who attested the original instrument, is styled the *original* copy. This copy is also termed *primordial*, and has the same force on production in a Spanish court as the original instrument, which is known as the *matrix*, would have. The latter is kept in the archive of the notary, and a minute is made thereon of every copy that is granted.

Other notarial copies are styled *traslados* or *testimonios*.

Copia may be an attested copy, but the word by itself does not imply more than simply a copy.

Copia segunda ;

The second, third or any other copy that is issued after the first, and whether made from the matrix or the original copy, is termed *copia segunda* or *traslado*. A second copy has the force of the original when it is made by order of a Judge, and on citation of the parties who might be affected thereby. Powers of attorney are, however, an exception from this rule, and copies thereof may be granted without an order or citation.

Derecho comun ;

The civil or general law of a place, as distinguished from the particular or municipal law of a province, district or city, or from any special or privileged law, as the military, ecclesiastical and commercial.

Derecho real ;

The inherent right to a thing, so that it is not extinguished by the death of him who possesses it, but which always exists therein into whosoever hands the thing may be transferred, as for example, the right in a *censo dominio*, *servidumbre*, *hipoteca*, &c.

Dominio directo ;

The right which a man has of concurring in the disposal of a thing the produce whereof he has assigned ; or of receiving a certain pension or annual tribute in acknowledgment of his seigniorial right or superiority over the property.

The right of superiority of a real estate without the right of useful ownership.

Dominio util ;

The right of receiving all the fruits of a thing upon paying a

contribution or tribute to him who preserves therein the direct ownership.

Efecto devolutivo ;

The cognizance which by means of an appeal the superior Judge takes of the decrees of the inferior Court without suspending their execution, but referring them back for reconsideration.

Efecto suspensivo ;

The cognizance which, in virtue of an appeal, the superior Judge takes of the decrees of the inferior, suspending their execution.

The appeal is admitted in both recourses ; that is to say, in so far as the devolutive and suspensive when the cause is not urgent and is in the plenary court (*juicio plenario*, which see).

Ejecutoria ;

The dispatch, which is issued by the tribunals, of sentences which do not admit of appeal, or that pass in authority of a thing decided in order that they may be carried into effect.

Enfiteusis ;

The alienation of the useful ownership of any possession in consideration of an annual tribute that is paid to the grantor who retains the direct ownership.

The contract whereby the owner of real property assigns to another the enjoyment for ever or for a long term with the charge of a tribute, annuity, pension or annual interest which is reserved thereon in token of his direct ownership.

Enmiendas ;

The correction of some error or defect.

The satisfaction and payment of losses incurred.

The revocation or correction of some sentence.

NOTE.—It is customary in Spain to enumerate at the end of every instrument all obliterations, interlineations, erasures and corrections (*enmiendas*) therein, the notary saving them, as the expression is, by the words *valen* or *no valen*.

Es bastante ;

A procurator *ad litem* (*procurador judicial* or *procurador para pleitos*) is bound when commencing proceedings to produce his power of attorney in Court, with a memorandum thereon signed by an advocate verifying the sufficiency of the authorisation thereby conferred. The memorandum is made in the words *Es bastante*, "it is sufficient."

Should the proceedings be annulled through any defect in a power, the sufficiency whereof has been attested by an advocate, he is liable to the party for costs and damages. Ley 3, tit. 31, lib. 5, and Ley 3, tit. 3, lib. 11, Nov. Recop.

NOTE.—Where powers of attorney intended to be acted on in Spain are drawn up in English it is desirable that the simplest language should be employed, as where technicalities are used they frequently give rise to delay in obtaining an official translation and in some cases to rejection. The better course is to draw up the power in the Spanish language, using as far as practicable the forms that Spanish lawyers are accustomed to.

Escritura publica ;

An instrument passed by a notary public, in presence of the parties who execute it, with the assistance of two witnesses, the principals signing it, or at their request one of the witnesses for them, if they cannot write, the notary and witnesses also signing.

NOTE.—Seals are not used in Spain, the *Escritura publica* is of the highest order of instruments and corresponds to an English deed under seal.

Estelionato ;

A fraud generally applied to the fraudulent sale or mortgage of a property previously sold or mortgaged.

Fadiga ;

The right possessed by the seignior in the direct ownership whenever the thing given in *enfiteusis* is alienated, so as to retain it for the sum that the purchaser offers. When the *enfiteuta* desires to sell the thing under an *enfiteusis*, he must make this known to the direct owner, who has the term of two months to decide on taking it at the same price that the purchaser offers.

Fideicomisario ;

Fideicomisario is defined to be the person to whom the testator leaves all the inheritance or a portion thereof or some bequest or legacy by way of *Fideicomiso*, that is, commending it to him in order that he may forthwith or at some future period deliver it to another.

It is sometimes used to signify simply an executor, but more frequently in the sense first given.

NOTE.—These definitions, although found in the Dictionary of the Spanish Academy, are questionable. The more accurate meaning of *Fideicomisario* is a legatee beneficially interested in property left to another in trust. The context shews this to be the meaning in Article 14 of the Ley Hipotecaria.

Fideicomiso ;

Every thing that the testator leaves to one man in order that he may deliver it to another, or the inheritance or a portion thereof that

the testator requests, charges or commands the heir to hand over to another. The heir who has to hand over the inheritance or a portion thereof is styled the *Heredero fiduciario*, *Fideiusuario* or *gravado*.

Fiduciario ;

He to whose trust the testator commends an inheritance or bequest in order to deliver it over into the hands of another, or the heir or legatee who is charged by the deceased to restore to another the whole or a portion of the inheritance or bequest that has been left to him.

Firma entera ;

The perfect signature, comprising the christian and surname as distinguished from the *media firma* or surname only.

Funciones fiscales ;

Duties appertaining to advocates named by the king to promote or defend in the supreme and superior tribunals of the kingdom the interests of the public treasury, and causes belonging to the public vindication.

Gananciales. See *Bienes gananciales*.

Hacer fe (to make faith) ;

The sufficiency of any statement or writing, as proof, is acknowledged when it is said that it makes faith.

Heredero fiduciario ;

Heir-trustee.

The heir holding property in trust for others.

Heredero forzoso or *necesario* ;

A forced or necessary heir.

If a testator leave either descendants or ascendants he is fettered in the disposal of his property. If he leave descendants they become his forced or necessary heirs, except as to one-fifth, which he may dispose of to strangers.

Where a testator leaves no descendants his ascendants inherit, except as to a third of his property, which the law allows him to dispose of.

The unfettered property is in the first case called *Quinto* and in the other *Tercio*.

Hijo ;

Child or other descendant.

Children are divided into

Legitimate, *Legitimos*.

Legitimated, *Legitimados*.

Illegitimate, *Ilegitimos*.

Hijo—continued.

Illegitimate are sub-divided as

Natural, *Naturales*.

Spurious or bastards, *Espurios*.

Spurious are further sub-divided as

Incestuous, *Incestuosos*.

Adulterous, *Adulterinos*.

Sacrilegious, the offspring of priests, monks or nuns, *Sacrilegos*.

Children of prostitutes, *Manceres*.

Hijo legitimado ;

A child born out of wedlock, who has become legitimate by reason of the subsequent marriage of the parents, by royal grant or by what is termed a "Rescript of the Prince."

Hijo legitimo ;

One born of lawful marriage, that is, of marriage celebrated in conformity with the laws and canons; one had in a putative marriage, that is, a marriage celebrated in the face of the church with an invalidating impediment, whereof both or one of the parties was ignorant; and one who, having been born of a father and mother who were not married to each other, is afterwards legitimated by their subsequent marriage.

Hijo ilegítimo, Bastardo ó Espurio ;

The term bastard is by some writers applied exclusively to the offspring of those who were under a legal incapacity to marry, although the *Ley 9 del Toro* treats the terms bastard and illegitimate as synonymous. The distinction appears to be maintained as respects inheritance; natural children inheriting from both parents but not so bastards, although, subject to some exceptions, they can inherit from the mother.

Hijo ilegítimo, natural ;

A child had of persons not in wedlock, who were under no legal incapacity to marry each other at the time of the conception of the child. *Ley 11 del Toro*.

In default of legitimate or legitimated children, natural children inherit from both parents, but it is otherwise with bastards or spurious.

See the case of *Doglioni* and another *v. Crispin*, not yet fully reported; but see *Weekly Notes of Law Reports*, vol. 1, p. 299—Portuguese Law.

Hipoteca (Hypothecation, Hypothec) ;

The real right which the creditor has over the property of the debtor that is found to be subjected by the law or by the individual to the payment or fulfilment of the debt or obligation contracted.

Hipoteca (Hypothecation, Hypothec)—continued.

The contract whereby one makes his property liable for the fulfilment of an obligation of himself or of another.

And the thing or estate itself which stands bound and liable for the security or fulfilment of the debt or obligation.

Hypothec, a privileged claim. *Tiers détenteur*, a personal and hypothecary debtor. (Consolidated Statutes of Lower Canada, No. 47.)

The *Hipoteca* is divided into

Tacit or legal, *Tacita ó legal*.

Express, *Expresa*.

The first is constituted at law without the necessity of a special agreement between the parties,—as for taxes, certain claims of wards, minors, husbands and wives, step-children, legatees, repairs of a ship, &c.

Incidente ;

The question or reply that arises between the parties in litigation during the course of the principal action.

Incidents are of two classes, those that have such a character and nature that the suit cannot be proceeded with until they be first solved, because they are certain preliminaries on the truth or falsehood whereof the decision of the principal matter depends ; others are only certain accessory ones, which do not impede the continuation of the suit and are reserved, annexed to the proceedings, to be determined in the definitive sentence at the same time as the demand put forward at the commencement.

Interés legal ;

Interest fixed by law as distinguished from *interés convencional* or stipulated.

Juez ponente ;

The Judge on whom devolves the duty of drawing up in writing the judgment of himself and colleagues.

Juicio plenario ;

In civil matters this is the same as the ordinary Court. It is called *plenario*, because they proceed therein with plenary information of the cause, and observe in all things the solemnities prescribed by law ; but in criminal matters, by *plenario* is understood the proceeding or Court held after the crime and culprit have been discovered in the summary investigation.

Juicio verbal ;

The Court wherein the matter subject thereto is neither ventilated nor decided in writing, but simply by word of mouth, although the result is written or entered.

Lesion enorme, or enormisima ;

Lesion enorme is the damage or injury that any one suffers by having been deceived in anything beyond one-half of the just price.

Lesion enormisima is the damage or injury that any one suffers by having been deceived in much more than one-half of the just price.

Media firma ;

The half-signature, or signature consisting in the surname without the christian name.

Parientes ;

Those who are related among themselves by ties of blood either as proceeding from one another or as descendants and ascendants, or as proceeding from one and the same race or trunk.

Peculio ;

The estate or wealth which a child possesses as separated from the property of the father.

This is divided into *profecticio*, *adventicio*, *castrense*, and *cuasicastrense*.

Profecticio is everything that the child acquires out of property of the father, or in respect or in contemplation of him.

Adventicio—Everything that the child acquires by his industry, fortune, by gift or inheritance of his mother or of relations or strangers.

Castrense—Whatever the son may acquire in the military service, or by reason thereof.

Cuasicastrense—Everything that the son acquires in virtue of the sciences, of public offices that he fills, or by benefice or ecclesiastical income or dignity.

Penas afflictivas ;

Corporal punishments that are capital, flogging, public exposure, as the pillory, working at pumps, galleys, mines, arsenals, public works, transportation from the kingdom, and imprisonment or solitary confinement for more than six months.

Pension ;

The rent or annual tribute which either in perpetuity or for a term is imposed on any landed estate.

The annual sum which the king gives for any special service out of the public funds, or that is imposed on any office or employment.

Poder ;

Power of Attorney—See "*Copia segunda* ;" also "*Es bastante*."

Predio ;

An inheritance, real estate, land or immoveable possession. It is rustic or urban. Rustic is the portion of uncovered land that is cultivated or worked in any way, such as corn lands, &c., in the country and orchards or gardens in villages. Urban is the spot whereon a dwelling-house is erected, whether in town or country. The *predio*, whether rustic or urban, may be *dominante*, that is, where it holds a *servidumbre*—or *serviente*, where it is subject to a *servidumbre* in another person.

Predio dominante ;

The property, &c., to which there belongs a *servidumbre* over other property.

Predio serviente ;

An inheritance, real estate, land or immoveable possession owing a *servidumbre* to a dominant inheritance, &c., provided that the *predio* belongs to another owner.

Procurador fiscal ;

Public attorney, an advocate named by the King to promote and defend in the supreme and superior tribunals of the kingdom the interests of the exchequer and causes belonging to the protection of the public.

Prodigo ;

A man who by sentence of a Judge has been deprived of the free administration of his property by reason of his leading a dissipated life. He is put on the footing of a lunatic, he is incompetent to be a witness, cannot make a will, cannot be a party to a suit without the authority and consent of his curator or guardian, and is disqualified from holding any public office.

*Profecticio. See Peculio.**Promotor fiscal ;*

The minister appointed to promote the observance of penal laws, or

He who in a criminal cause is named by the Judge to prepare and support the accusation against the criminal.

*Quinto. See Heredero forzoso.**Real Cedula ;*

The Royal Dispatch issued by some superior tribunal, wherein some favor is granted or some interlocutory decree is made. It is headed THE KING, without mention of more titles.

It is signed by the King himself. The secretary of the tribunal to which it appertains puts the minor countersign ; it is rubricated by some ministers and is usually delivered out to the party.

Rebeldia (contempt) ;

Disobedience to the order of the lawful Judge who calls some one into Court, or the neglect or delay in answering or appearing within the term of the citation or summons made by the Judge; the term is used both in civil and criminal matters.

Recurso ;

The two recourses referred to in Article 1177 of the Appendix are styled *efecto devolutivo* and *efecto suspensivo*, which see.

Regente ;

The first magistrate of a body composed of several tribunals in combination.

Relator ;

A person appointed and deputed in every *Audiencia* to make a summary of facts in causes or suits for the Judge.

Servidumbre (Easement, Common Right, &c.) ;

The right to which the property of another is subject for our advantage, or that of a property that belongs to us, or the right constituted in something belonging to another, by reason whereof the owner is bound not to do or permit that anything be done therein in benefit of another person or thing. *Jus faciendi aut prohibendi aliquid in alieno.*

They may be real or personal.

Real are divided into urban and rustic or predial.

The urban are of various kinds, but relate principally to buildings, as party walls, &c., water, the collection of water, smoke, sewers, light and rights of view.

Rustic or predial are those appertaining more to land, as rights of way, of water for mills, for irrigation, or for watering cattle, for pasturage, or taking stones, earth or land for making mortar, lime, &c.

Personal are those of use, usufruct or habitation.

Tanteo ;

The agreement that is made to pay for rent or for furniture the same price as that at which it is let or bid for at auction.

The right which the law gives in certain cases to particular persons to sell at the price offered by others, or to take at the same price what has been sold to others.

This word is synonymous with *retracto*, or the right of retrieving or recovering a thing sold to another.

*Tercio. See Heredero forzoso.**Título ;*

The cause in virtue whereof we possess something, and the instrument whereby our right is proved.

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